

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 690

MINERSVILLE SCHOOL DISTRICT, BOARD OF
EDUCATION OF MINERSVILLE SCHOOL DIS-
TRICT, ET AL., PETITIONERS,

vs.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN
GOBITIS AND WILLIAM GOBITIS, MINORS, BY
WALTER GOBITIS, THEIR NEXT FRIEND

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 1, 1940.

CERTIORARI GRANTED MARCH 4, 1940.

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IN THE

District Court of the United States,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

WALTER GOBITIS, Individually, and
LILLIAN GOBITIS and WILLIAM
GOBITIS, Minors, by WALTER
GOBITIS, Their Next Friend,

v.

MINERSVILLE SCHOOL DISTRICT, BOARD
OF EDUCATION OF MINERSVILLE
SCHOOL DISTRICT, Consisting of
DAVID I. JONES, DR. E. A. VALIBUS,
CLAUDE L. PRICE, DR. T. J. Mc-
GURL, THOMAS B. EVANS, and
WILLIAM ZAPP, and CHARLES E.
ROUDABUSH, Superintendent of
MINERSVILLE PUBLIC SCHOOLS.

H. M. McCaughey,
Esq.

John C. McGurl,
Esq.,
Rawle & Hender-
son, Esqs.

DOCKET ENTRIES.

- May 3, 1937. Bill of Complaint, filed.
- May 3, 1937. Subpœna exit—returnable May 24, 1937.
- May 12, 1937. Subpœna returned: "on May 7, 1937, served" and filed.
- May 18, 1937. Appearance of John C. McGurl, Esq., and Rawle & Henderson, Esqs., for defendants filed.
- May 27, 1937. Motion to dismiss bill of complaint filed.
- Sept. 11, 1937. Præcipe to place case on Argument List filed.
- Oct. 18, 1937. Argued sur motion to dismiss bill.

- Dec. 1, 1937. Opinion, Maris, J., denying motion to dismiss bill of complaint filed.
- Dec. 30, 1937. Answer of defendant filed.
- Jan. 6, 1938. Printed copy of Answer filed.
- Feb. 15, 1938. Trial—witnesses sworn.
- Mar. 2, 1938. Testimony filed.
- Apr. 5, 1938. Suggestion of death of Geo. H. Beatty, filed.
- Apr. 5, 1938. Defendant's requests for findings of fact and conclusions of law filed.
- June 18, 1938. Opinion, Maris, J., granting decree for plaintiffs filed.
- June 18, 1938. Plaintiff's requests for findings of fact and conclusions of law and rulings of the Court thereon filed.
- June 18, 1938. Rulings of the Court on defendant's requests for findings filed.
- July 11, 1938. Final Decree granting perpetual injunction with costs filed.
- July 11, 1938. Writ of Perpetual Injunction exit.
- Aug. 2, 1938. Statement of Evidence, Stipulation as to Statement of evidence, and Order approving narrative statement filed.
- Aug. 9, 1938. Stipulation of Counsel that proceedings be discontinued as to George Beatty, defendant, filed.
- Aug. 9, 1938. Præcipe to mark case discontinued as to George Beatty, filed.
- Aug. 9, 1938. In accordance with præcipe filed, this case is marked discontinued as to George Beatty only; Attest: Robert T. Press, Deputy Clerk...

Docket Entries

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- Aug. 9, 1938. Petition of defendants for appeal and Order allowing Appeal filed.
- Aug. 9, 1938. Assignments of Error filed.
- Aug. 10, 1938. Copy of Notice of Appeal filed.
- Aug. 10, 1938. Bond sur appeal in \$250., with Aetna Casualty & Surety Co., surety, approved and filed.
- Aug. 12, 1938. Citation returned: "service accepted" and filed.
- Aug. 15, 1938. Præcipe for transcript of record filed.

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Bill in Equity

BILL IN EQUITY.

(Filed May 3, 1937.)

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

IN EQUITY.

Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,

Complainants,

v.

Minersville School District; Board of Education of Minersville School District, Consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools,

Defendants.

To the Honorable Judges of the United States District Court for the Eastern District of Pennsylvania:

The petition of Walter Gobitis, of Minersville, in Schuylkill County, Pennsylvania, individually, and as next friend of Lillian Gobitis and William Gobitis, respectfully represents:

I. That Walter Gobitis is the father of Lillian Gobitis and William Gobitis, who are minors, and is a natural-born citizen of the United States and of the Commonwealth of Pennsylvania, and resides at 15-17 Sunbury Street in the City of Minersville, Pennsylvania, and brings this petition individually, and as next friend of Lillian Gobitis and William Gobitis, minors.

II. That Lillian Gobitis, age 13 years, and William Gobitis, age 12 years, are minors and residents of Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years.

III. That the Minersville School District is a public school district embracing the City of Minersville, Schuylkill County, Pennsylvania, and adjacent territory, under and by virtue of the laws of the Commonwealth of Pennsylvania; that the defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, and William Zapf are now and at all times material hereto, constitute the duly elected, qualified and acting Board of Education of such school district and as such are a body politic and corporate in law and have the management and control of the Minersville Public Schools; that the defendant Charles E. Roundbush, is the superintendent of the Minersville Public Schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

IV. That the aforesaid Minersville Public Schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

V. The court has jurisdiction of this suit for the following reasons:

1. The suit is to redress the deprivation, under color of a regulation of the Board of Education of the Minersville Public Schools of rights, privileges, and immunities secured to complainants by the Constitution of the United States.

2. The value of the right for which petitioners seek protection, to wit, the right of his children to obtain an education in the public schools of the Commonwealth of Pennsylvania and in the school maintained by the Minersville School District is a valuable personal and property right to the

complainant Walter Gobitis, and the right to obtain and receive such education is a valuable personal and property right to said minor complainants, and the denial to complainants of such right has and is causing them damage in excess of the sum or value of \$3000 exclusive of interest and costs, and the controversy arises under the Constitution of the United States.

VI. The complainant Walter Gobitis is now, and was at all times material hereto, a resident and taxpayer of said Minersville School District, and his said children Lillian Gobitis and William Gobitis, being likewise residents of said district and within school age, are eligible to and have the right to attend said Minersville Public Schools, and are entitled to all of the benefits of education and training taught in and provided by said schools; that being desirous of having his said children obtain an education, complainant Walter Gobitis placed his said children in the said Minersville Public Schools at the beginning of the scholastic year 1935-1936. Complainants further allege that said children at all times during their attendance of said schools conducted themselves in accordance with the rules and regulations applicable to said schools, were not disqualified in any way from attending the same, and were obedient pupils and industrious scholars, applying themselves to their studies to the best of their ability.

VII. Complainants further allege that heretofore, to wit, on the sixth day of November A. D. 1935 at a regular meeting of the said Board of Education of the Minersville Public Schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

VIII. Complainants allege that they are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement or covenant with Jehovah God, wherein they have consecrated themselves to do His will and obey His commandments; they accept the Bible as the word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Complainants and all of Jehovah's Witnesses sincerely and honestly believe that the act of saluting a flag contravenes the law of God in this, to wit:

1. To salute a flag would be a violation of the divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, which reads as follows, to wit:

"Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth;

"Thou shalt not bow down thyself to them, nor serve them",

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

2. To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes is of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of God, and contravenes His express command as set forth in Holy Writ.

IX. Complainant Walter Gobitis alleges that he has at all times endeavored to instruct and inform his said chil-

dren in the truths set forth in God's Work, the Bible, desiring to educate them and bring them up as devout and sincere Christian men and women, all as it was his right, privilege and duty so to do; that said children have been so instructed from an early age and are now and have been at all times material hereto sincere believers in the Bible teachings and have faithfully endeavored to obey the commandments of Almighty God as set forth therein.

X. Complainants allege that they are American citizens and that they honor and respect their country and state, and willingly obey its laws, but that they nevertheless believe that their first and highest duty is to their God and His commandments and laws, and that true Christians have no alternative except to obey the Divine commandments and follow their Christian convictions.

XI. That at the meeting of the Board of Education of the Minersville Public Schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in paragraph VII of this complaint, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, as complainants are informed and believe, publicly announced, "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Waslewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

XII. That the said Lillian Gobitis and William Gobitis did not and were conscientiously unable to salute the flag because their religious beliefs and manner of worship forbade such salute, and the giving of such salute was in contravention of and in conflict with the commands of Almighty God, as they sincerely believed.

XIII. That since the sixth day of November A. D. 1935, the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and

have not attended their respective classes in the aforesaid Minersville Public Schools.

XIV. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the alleged refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to.

XV. That under the school laws of the Commonwealth of Pennsylvania the said Walter Gobitis is required to cause his children, the said Lillian and William Gobitis, regularly to attend the public schools of the school district in which the said Walter Gobitis resides, or to attend a private school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments.

XVI. That the said Walter Gobitis is financially unable to have his said children Lillian and William Gobitis attend a private school in which there is given instruction equivalent to that provided by the public schools for children of similar age and attainments, or to obtain for them equivalent instruction elsewhere than at the said public school.

XVII. Complainants have no adequate remedy at law to prevent the aforesaid injury and damage.

XVIII. The regulation of the Board of Education hereinbefore referred to and set out in full in paragraph VII of this petition is unconstitutional, null and void under the due process clause of the 14th Amendment to the Constitution of the United States for the following reasons, to wit: It denies liberty and rights of property without due process of law; denies to complainants equal protection of the laws; and denies freedom of worship of Almighty God in accordance with the dictates of conscience.

XIX. The regulation aforesaid, if valid on its face, is unconstitutional, null and void as applied to the complain-

ants Lillian Gobitis and William Gobitis under the due process clause of the Fourteenth Amendment of the Constitution of the United States for the following reasons, to wit:

1. It unreasonably restricts the freedom of religious belief and worship and the free exercise thereof, of said complainants.

2. It unreasonably restricts the freedom of speech of said children by subjecting them to the penalties of dismissal from school and of juvenile delinquency, solely because they are conscientiously unwilling and unable to salute the flag.

3. It discriminates against children in the public schools by requiring them to salute the flag whereas it does not make such a requirement of the rest of the population, and thereby denies the said Lillian Gobitis and William Gobitis the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution.

XX. The regulation aforesaid and the proceedings thereunder as applied to the complainants Lillian Gobitis and William Gobitis are unconstitutional, null and void under the Eighth Amendment to the Constitution of the United States in that cruel and unusual punishments are inflicted on said complainants, to wit, excluding them from the Minersville Public Schools and subjecting them to the penalties of juvenile delinquency, solely because they are conscientiously unwilling and unable to salute the flag.

XXI. The regulation, if valid on its face, is unconstitutional, null and void as applied to the complainant Walter Gobitis under the due process clause of the Fourteenth Amendment to the Constitution of the United States for the following reasons, to wit:

1. It unreasonably restricts the liberty of Walter Gobitis in his choice and direction that his said children be educated at free public schools.

2. It unreasonably restricts the liberty of said Walter Gobitis by subjecting him to penalties of prosecution and punishment under the compulsory school attendance laws of the Commonwealth of Pennsylvania, not for his own conduct, but for the conduct of his children in failing to salute the flag.

3. It unreasonably restricts the liberty of said Walter Gobitis freely to impart to his said children Bible teachings and a manner of worship according to the dictates of his own conscience.

4. It denies the said Walter Gobitis of the property right to have his children, the said Lillian Gobitis and William Gobitis, educated in the free public school of the City of Minersville, without charge.

XXII. Complainants further allege that the acts, conduct and decisions of said defendants aforesaid cannot be justified under the police power in that the failure and refusal to salute the flag on the part of said minor complainants does not and cannot affect the public interest or safety or the rights and welfare of others.

WHEREFORE, your complainants, being without remedy save in a court of equity where such matters are properly cognizable, pray:

1. That the regulation of the Board of Education of Minersville Public Schools set out in the petition be declared and decreed to be null and void as violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States as claimed in the petition.

2. That its application to petitioners be decreed to be violative of the rights of petitioners under the due process clause of the Fourteenth Amendment to the Constitution of the United States, as claimed in this petition.

3. That the said defendants, and each of them, and all persons acting under their authority and direction be enjoined and restrained from doing the following acts:

(a) From continuing in force the expulsion order expelling said minor complainants from school and prohibiting their attendance at said schools.

(b) From requiring and ordering said minor complainants to salute the flag during the course of the patriotic exercises conducted at said schools, or at any other time while in attendance at said schools.

(c) From in anywise hindering or molesting or interfering with the right of said minor complainants to enjoy full religious freedom in the manner dictated by conscience.

(d) That complainants may have such other and further relief as to the Court may seem just and proper.

H. M. McCAUGHEY,
Attorney for Complainants.

O. R. BOYLE,
Of Counsel.

EASTERN DISTRICT OF PENNSYLVANIA,
STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA,

} ss.:

Personally appeared before me, a notary public in and for said county and State, WALTER GOBITIS, complainant above named, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing bill in equity, so far as stated upon his own knowledge, are true, and so far as stated upon information, he believes them to be true, and expects to be able to prove them to be true upon the trial of this cause.

WALTER GOBITIS.

Subscribed and sworn to before me this third day of May, A. D. 1937.

(Seal) KATHRYN L. McHUGH,
Notary Public, Philadelphia County.
Commission expires February 19, 1941.

MOTION TO DISMISS BILL OF COMPLAINT.

(Filed May 27, 1937.)

Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville Public Schools, defendants, by their attorneys, John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above-entitled case upon grounds and reasons therefor as follows:

1. The matters set forth in plaintiffs' bill of complaint do not involve a dispute or controversy within the jurisdiction of this Court.

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of \$3000 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.

7. The bill of complaint fails to show that the plaintiffs have sustained or in the future are likely to sustain any

loss, damage or injury for which the defendants are liable either at law or in equity.

8. Under the Constitution of the United States and under the Constitution and laws of the State of Pennsylvania the defendants have full power and authority to adopt the regulation complained of and to enforce its provisions as set forth in the bill of complaint.

Therefore the defendants and each of them respectively move the Court to dismiss the bill of complaint with their reasonable costs and charges on their behalf most wrongfully sustained.

MINERSVILLE SCHOOL DISTRICT: BOARD OF
EDUCATION OF MINERSVILLE SCHOOL DISTRICT,
Consisting of DAVID I. JONES, DR.
E. A. VALIBUS, CLAUDE L. PRICE, DR.
T. J. MCGURL, GEORGE BEATTY, THOMAS
B. EVANS and WILLIAM ZAPP, and
CHARLES E. ROUDABUSH, SUPERINTENDENT
OF MINERSVILLE PUBLIC SCHOOLS,
Defendants,

By JOHN B. MCGURL,

RAWLE & HENDERSON,

By JOSEPH W. HENDERSON,

Attorneys for Defendants.

OPINION

Sur Motion to Dismiss Bill of Complaint.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

IN EQUITY.

*Walter Gobitis, Individually, and Lillian Gobitis and
William Gobitis, Minors, by Walter Gobitis, Their Next
Friend,*

Complainants,

v.

*Minersville School District: Board of Education of Miners-
ville School District, Consisting of David I. Jones,
Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl,
George Beatty, Thomas B. Evans and William Zapf,
and Charles E. Roudabush, Superintendent of Miners-
ville Public Schools;*

Defendants.

December 1, 1937.

MARIS, J.

The plaintiffs, Walter Gobitis, and his two minor children, Lillian and William, have filed their bill in equity against the School District of the Borough of Minersville, Schuylkill County, Pennsylvania, and against eight individuals, seven of them comprising the Board of School Directors of the School District, and one of them being the superintendent of schools of the district.

The bill avers that the minor plaintiffs, who reside in the Borough of Minersville, attended the public schools conducted by the defendants prior to November 6, 1935. On that day the defendant school directors adopted a school

regulation requiring all teachers and pupils of the schools to salute the American flag as a part of the daily exercises and providing that refusal to salute the flag should be regarded as an act of insubordination and should be dealt with accordingly. Plaintiffs, who are members of a body of Christians known as Jehovah's Witnesses, are conscientiously opposed upon religious grounds to saluting the flag, since they consider such action to be a direct violation of divine commandments laid down in the Bible. The minor plaintiffs, having been conscientiously unable, because of their religious beliefs and manner of worship, to salute the flag as required by the regulation of the defendant school directors, above referred to, they were on November 6, 1935, expelled, by the defendant superintendent of schools, from the public schools conducted by the defendants and by reason thereof have since been unable to attend those schools.

The bill further avers that plaintiff, Walter Gobitis, is financially unable to provide an education for the minor plaintiffs at a private school and that the refusal of the defendants to permit them to remain in the public schools has damaged him in excess of \$3000. Alleging that the defendants' regulation violates the Fourteenth Amendment to the Federal Constitution, in that it unreasonably restricts the freedom of religious belief and worship and the free exercise thereof of the plaintiffs, the bill seeks an injunction restraining the defendants from enforcing the regulation against the plaintiffs. The defendants have moved to dismiss the bill upon the grounds that a good cause of action is not set forth and that, even if it is, this Court has no jurisdiction to entertain it.

In disposing of defendants' motion the facts set forth in the bill and the inferences properly to be drawn therefrom must be taken to be true. Considering them in this light we will first examine the cause of action averred by the bill. It is claimed on behalf of the minor plaintiffs that they have the right to attend the defendants' public schools; indeed that they are required by law to attend them unless

they can secure equivalent education privately. This, however, Walter Gobitis avers he is financially unable to provide. They further contend that the enforcement of defendants' regulation conditions their right upon their participation in what is to them a religious ceremony to which they are conscientiously opposed, thus depriving them of their liberty of conscience without due process of law. They also say that, since they are required by law to attend defendants' public schools, being financially unable to secure an equivalent education privately, they are by reason of the regulation in question placed under legal compulsion to participate in an act of worship contrary to the dictates of their consciences.

Under Section 1414 of the School Code, as recently amended, (24 P. S. Sec. 1421), the minor plaintiffs are required to attend a day school continuously throughout the entire term during which the public elementary schools in their district shall be in session, until they respectively reach eighteen years of age. Sec. 1423 of the School Code (24 P. S. Sec. 1430) provides that every parent of any child of school age who fails to comply with the provisions of the act regarding compulsory attendance is guilty of a misdemeanor. In the light of these statutory provisions and of Section 1 of Article X of the State Constitution which directs the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated," we conclude that the minor plaintiffs have a right to attend the public schools and indeed a duty to do so if they are unable to secure an equivalent education privately.

Section 3 of Article I of the Constitution of Pennsylvania provides that "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . no human authority can, in any case whatever, control or interfere with the rights of conscience . . ." This is but the expression of

the full and free right which, as Mr. Justice Miller said in *Watson v. Jones*, 80 U. S. 679, in this country is conceded to all "to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights."

The right of conscience referred to in the Pennsylvania Constitution was defined by Chief Justice Gibson in *Commonwealth v. Leshner*, 17 S. & R. 155, to be "a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience sake, the doing or forbearing of which, is not prejudicial to the public weal." In these words that eminent jurist clearly stated the principle which underlies the constitutional provisions of all the states and which is one of the fundamental bases upon which our nation was founded, namely, that individuals have the right not only to entertain any religious belief but also to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, morals, property or personal rights of the people.

In applying this principle it is obvious that the individual concerned must be the judge of the validity of his own religious beliefs. Liberty of conscience means liberty for each individual to decide for himself what is to him religious. If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty. To such a pernicious and alien doctrine this court cannot subscribe.

In the present case the bill avers that the refusal of the minor plaintiffs to salute the flag is based on conscientious religious grounds. It seems obvious that their refusal to salute the flag in school exercises could not in any way prejudice or imperil the public safety, health or morals or the property or personal rights of their fellow-citizens. Certainly no such suggestion was made by the defendants at the argument. However, in the view we have taken such prejudice or peril, if it exists, is a matter of defense. Consequently we must hold on this motion that the action of the minor defendants in refusing for conscience sake to salute the flag, a ceremony which they deem an act of worship to be rendered to God alone, was within the rights of conscience guaranteed to them by the Pennsylvania Constitution. The conclusion is inescapable that the requirement of that ceremony as a condition of the exercising of their right or the performance of their duty to attend the public schools violated the Pennsylvania Constitution and infringed the liberty guaranteed them by the fourteenth amendment.

We are aware that a number of courts have reached a contrary conclusion. *Hering v. State Board of Education*, 117 N. J. L. 455, 189 A. 629, affirmed N. J. L. ; 194 A. 177; *Leoles v. Landers*, Ga. ; 192 S. E. 218; *Nicholls v. Mayor and School Committee of Lynn*, Mass. ; 7 N. E. (2d) 577. In each of these cases

it was held that the salute to the flag could have no religious significance. In so holding, however, it appears to us that the courts which decided these cases overlooked the fundamental principle of religious liberty to which we have referred; namely, that no man, even though he be a school director or a judge, is empowered to censor another's religious convictions or set bounds to the areas of human conduct in which those convictions should be permitted to control his actions, unless compelled to do so by an overriding public necessity which properly requires the exercise of the police power. Furthermore it appears that the

courts in these cases largely relied on *Hamilton v. Regents*, 293 U. S. 245, in which the Supreme Court held that a regulation of the University of California making military training compulsory for all students did not unduly infringe the liberty of students who were opposed to war and military training on religious grounds. That decision, however, was placed upon the ground that although the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students based their objections to military training is included in the religious liberty of the individual, that liberty had not been infringed by the regulation in question since the objecting students were not required by law to attend the University, and in any event the right of the state in the interest of public safety to require its citizens to prepare for its defense by force of arms was paramount to their right to religious liberty. In that case Mr. Justice Butler said:

“There need be no attempt to enumerate or comprehensively to define what is included in the ‘liberty’ protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training. *Meyer v. Nebraska*, 262 U. S. 390, 399. *Pierce v. Society of Sisters*, 268 U. S. 510. *Stromberg v. California*, 283 U. S. 359, 368-369. *Near v. Minnesota*, 283 U. S. 697, 707. The fact that they are able to pay their way in this university but not in any other institution in California is without significance upon any constitutional or other question here involved. California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education. Taken on the basis of the facts

alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.

"Viewed in the light of our decisions that proposition must at once be put aside as untenable.

"Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies. *Selective Draft Law Cases*, supra, p. 378. *Minor v. Happersett*, 21 Wall. 162, 166."

In the case before us the attendance of the minor plaintiffs at defendants' schools is, as we have seen, required by law. Furthermore their refusal to salute the flag does not prejudice the public safety. Consequently *Hamilton v. Regents*, supra, does not support the validity of the regulation here involved. On the contrary that regulation, although undoubtedly adopted from patriotic motives, appears to have become in this case a means for the persecution of children for conscience sake. Our beloved flag, the emblem of religious liberty, apparently has been used as an instrument to impose a religious test as a condition of receiving the benefits of public education. And this has been done without any compelling necessity of public safety or welfare. We may well recall that William Penn, the founder of Pennsylvania, was expelled from Oxford University for his refusal for conscience sake to comply with regulations not essentially dissimilar, and suffered, more than once, imprisonment in England because of his religious convictions. The Commonwealth he founded was intended as a haven for all those persecuted for conscience sake. The

provisions of its constitution to which we have referred were undoubtedly intended to secure to its citizens that religious freedom which had been denied their ancestors in the countries from which they came. These constitutional provisions must be construed in the light of that history. *Maxwell v. Dow*, 176 U. S. 581; *People v. Harding*, 53 Mich. 481, 51 Am. R. 95; *Farmers & Mechanics Bank v. Smith*, 3 S. & R. 63. In these days when religious intolerance is again rearing its ugly head in other parts of the world it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachment. Our conclusion is that the plaintiffs have stated a good cause of action. O

The defendants' motion also raised the question of the jurisdiction of this court to entertain the action. This the plaintiff contends is conferred by Subsections (1) and (14) of Section 24 of the Judicial Code (28 U. S. C. Sec. 41).

Subsection (1) of Section 24 of the Judicial Code gives the District Courts jurisdiction "of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the Constitution or laws of the United States, . . ."

Subsection (14) confers jurisdiction "of all suits . . . in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The suits referred to in subdivision (14) are those authorized by Section 1979 R. S. (8 U. S. C. Sec. 13), which provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citi-

zen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws; shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

The question which we must determine is whether the rights which the plaintiffs claim have been invaded arise under the Constitution of the United States within the meaning of Subsection (1) of Section 24 of the Judicial Code, or are secured by the Constitution within the meaning of subsection (14). If they do not, then the case does not fall within either subdivision and this court has no jurisdiction.

It is quite clear that plaintiff's rights are not secured by the Federal Constitution but are secured, if at all, by the Constitution and laws of Pennsylvania. The only provision of the Federal Constitution on the subject is contained in the first amendment and that merely prohibits Congress from making any law "respecting an establishment of religion or prohibiting the free exercise thereof". It confers no rights upon these plaintiffs; *Permoli v. Municipality No. 1 of the City of New Orleans*, 44 U. S. 589. Nor does the fourteenth amendment, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of . . . liberty . . . without due process of law" have that effect. The privileges and immunities protected by this amendment are only those that belong to citizens of the United States as distinguished from citizens of the states—those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources. *Hamilton v. Regents*, *supra*, p. 261. Nor does the due process clause secure to the plaintiffs the rights in question. That clause merely protects existing personal liberties from undue abridgment by the states. It does not itself secure to individuals any new or additional lib-

erties. Subdivision (14) relates only to rights *secured* by the Constitution or laws of the United States. It follows that this court has no jurisdiction of the suit under that subdivision.

Do we, however, have jurisdiction of the suit under subdivision (1) as of a case involving \$3,000 and arising under the Constitution of the United States? So far as the jurisdictional amount is concerned there is a *clear* averment in the bill that plaintiff, Walter Gobitis, is financially unable to provide an education for the minor plaintiffs at a private school and that the refusal of the defendants to permit them to remain in the public schools has damaged him in excess of \$3,000. We cannot say, as a matter of law, that it will not cost him \$3,000 to complete the education of the minor plaintiffs at private schools. Consequently we must hold that the court has jurisdiction so far as the amount involved is concerned.

There remains the question whether the suit is one *arising* under the Constitution of the United States. The liberty protected by the due process clause of the fourteenth amendment undoubtedly includes the liberty to entertain any religious belief, to practice any religious principle and to do any act or refrain from doing any act on conscientious grounds, which does not endanger the public safety, violate the laws of morality or property or infringe on personal rights. *Hamilton v. Regents*, *supra*, (p. 262). The prohibition of the due process clause is against action by the states and it follows that if the State of Pennsylvania has deprived the plaintiffs of their religious liberty without due process of law the case *arises* under the fourteenth amendment to the Federal Constitution and this court has jurisdiction of the bill under subdivision (1) of Section 24 of the Judicial Code.

This brings us to the final question whether from the averments of the bill it appears that the State of Pennsylvania has done so. As we have already indicated the enforcement against the minor plaintiffs of the regulation in

question appears to deprive the plaintiffs of the liberty of conscience guaranteed them by the Pennsylvania Constitution and protected by the fourteenth amendment to the Federal Constitution. The regulation would consequently run afoul of the due process clause if its adoption and enforcement can be said to be the action of the state.

It is clear that the defendant school district is an arm of the state, *Ford v. School District*, 121 Pa. 543; and that its regulations adopted within the scope of the authority granted to it by the statutes of the state, are the acts of the state within the meaning of the fourteenth amendment. *New Orleans Waterworks Co. v. Louisiana Sugar Refining Co.*, 125 U. S. 18; *North American Cold Storage Co. v. Chicago*, 211 U. S. 306. It is equally clear that if the regulation in question was adopted without statutory authority or in direct violation of a statutory prohibition it is not the act of the state and cannot give rise to a federal question. *Barney v. New York*, 193 U. S. 430; *Memphis v. Cumberland Teleph. & Teleg. Co.*, 218 U. S. 624.

The authority conferred by the Pennsylvania School Code upon the defendant school district is to adopt "and enforce such reasonable rules and regulations as it may deem necessary and proper . . . regarding the conduct and deportment of all pupils attending the public schools in the district." 24 P. S. Sec. 338. It will thus be seen that the power conferred upon the defendant school directors was to adopt such regulations as are reasonable. There is in the present bill, however, no averment that the regulation in question is unreasonable. Relief is not sought upon the ground that the defendants are without power under the School Code to adopt and enforce the regulation or that they are prohibited by it from doing so. Obviously it cannot be said that the regulation is unreasonable per se or that considered generally it is repugnant to the Constitution or laws of the state. It is only in its application to the minor plaintiffs that it violates the constitutional guarantees. What we have here is an action by public officers,

agents of the state, within the scope of the power conferred upon them by statute which when applied to these plaintiffs deprives them of their liberty of conscience in violation of the fourteenth amendment. Such an abuse of power presents a case arising under the Constitution, and this court accordingly has jurisdiction under subsection (1) of Section 24 of the Judicial Code. *Hom. Teleph. & Teleg. Co. v. Los Angeles*, 227 U. S. 278. In the case just cited Chief Justice White said: (pp. 287-289)

“To speak broadly, the difference between the proposition insisted upon and the true meaning of the Amendment is this: that the one assumes that the Amendment virtually contemplates alone wrongs authorized by a state, and gives only power accordingly, while in truth the Amendment contemplates the possibility of state officers abusing the powers lawfully conferred upon them by doing wrongs prohibited by Amendment. In other words, the Amendment, looking to the enforcement of the rights which it guarantees and to the prevention of the wrongs which it prohibits, proceeds not merely upon the assumption that states, acting in their governmental capacity, in a complete sense, may do acts which conflict with its provisions, but, also, conceiving, which was more normally to be contemplated, that state powers might be abused by those who possessed them, and as a result might be used as the instrument for doing wrongs, provided against all and every such possible contingency. Thus, the completeness of the Amendment in this regard is but the complement of its comprehensive inclusiveness from the point of view of those to whom its prohibitions are addressed. Under these circumstances it may not be doubted that where a state officer, under an assertion of power from the state, is doing an act which could only be done upon the predicate that there was such power, the inquiry as to the repugnancy of the act to the 14th Amendment cannot be avoided by in-

sisting that there is a want of power. That is to say, a state officer cannot, on the one hand, as a means of doing a wrong forbidden by the Amendment, proceed upon the assumption of the possession of state power, and at the same time, for the purpose of avoiding the application of the Amendment, deny the power, and thus accomplish the wrong. To repeat: for the purpose of enforcing the rights guaranteed by the Amendment when it is alleged that a state officer, in virtue of state power, is doing an act which, if permitted to be done, *prima facie* would violate the Amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority."

It may be thought, in view of the fact that the plaintiffs' rights arise under the Pennsylvania Constitution and the defendants' action, being in violation of that constitution, is unconstitutional and void, that it is therefore not the action of the state within the meaning of the fourteenth amendment but rather a matter to be dealt with first by the state courts. This very question, however, was presented in *Home Teleph. & Teleg. Co. v. Los Angeles*, *supra*, and in disposing of it the court held that the fact that the State Constitution also prohibited the action in question did not deprive the federal court of jurisdiction or require that the matter be first litigated in the state courts.

The motion to dismiss the bill is denied.

JOINT AND SEVERAL ANSWERS

Of Minersville School District: Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valebus (Misnamed in the Above Caption), Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush. Superintendent of Minersville Public Schools.

(Filed December 30, 1937.)

The answer of Minersville School District: Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valebus (misnamed in the above caption), Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville Public Schools, defendants in this cause now and at all times saving and reserving to themselves all manner of objections and exceptions to complainants' bill and without in any way waiving the many errors, uncertainties and imperfections of complainants' bill of complaint filed, for answer thereto, or to so much thereof as is necessary to answer, say:

1. The defendants admit the allegations in paragraph one.

2. The defendants admit the allegations in paragraph two.

3. The defendants admit the allegations in paragraph three except the allegation that said school district embraces territory adjacent to Minersville, Pennsylvania. On the contrary, defendants aver that said school district embraces only the Borough of Minersville. Defendants further aver that David I. Jones is no longer a member of the Board of Education of Minersville School District, having been succeeded by Dr. E. W. Keith, subsequent to the filing of complainants' bill in equity.

4. The defendants admit the allegations in paragraph four.

5. Defendants deny that this Court has jurisdiction of this proceeding for the reasons set forth in paragraph five or for any other reason. On the contrary, defendants aver under the facts set forth in complainants' bill of complaint that the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States, and that; therefore, this Court has no jurisdiction under Subsection 14 of Section 24 of the Judicial Code, as amended (28 U. S. C. A., Section 41 (14)). Defendants further aver that under the facts set forth in complainants' bill of complaint the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States, and that the plaintiffs have failed in said bill to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is costing them damage in excess of the sum or value of three thousand dollars (\$3000), exclusive of interest and costs, and, therefore, this Court has no jurisdiction under Subsection 1 of Section 24 of the Judicial Code, as amended (28 U. S. C. A., Section 41 (1)).

Defendants further aver that they have heretofore filed a motion to dismiss plaintiffs' bill of complaint on the grounds that a good cause of action has not been set forth, and that even if a good cause of action has been set forth, this Court has no jurisdiction to entertain plaintiffs' suit. The defendants further aver that this Court has no jurisdiction for the reasons set forth in said motion to dismiss, which reasons are incorporated into this joint and several answers by reference thereto and raised as an additional defense to the plaintiffs' bill of complaint.

6. Denied. Defendants deny that the minor plaintiffs, Lillian Gobitis and William Gobitis, at all times during their attendance at the Minersville Public Schools conducted themselves in accordance with the rules and regulations applicable to said schools and were not disqualified in any way from attending the same and were obedient pupils. On the contrary, defendants aver that minor plaintiffs, Indian Go-

bitis and William Gobitis, knowingly and wilfully violated the regulation adopted by the Board of Education of the Minersville Public Schools requiring pupils to salute the American flag as part of the daily exercises, and that by reason thereof said minor plaintiffs were expelled from the Minersville Public Schools for said act of insubordination.

7. Defendants admit the allegations in paragraph seven.

Defendants further aver that said regulation was reasonable, and that the adoption thereof was within the authority of the Board of Education of Minersville Public Schools and did not violate any Federal or State statute or any provision in the Constitution of the United States or the Constitution of the State of Pennsylvania.

Defendants further aver that subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public Schools at the opening of school to rise, place their right hands on their respective breasts and to speak the following words: "I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all." The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag.

8. Defendants aver that they have no knowledge as to whether the plaintiffs are members of an unincorporated association known as Jehovah's Witnesses, and that since the means of proving said allegation are under the exclusive control of plaintiffs, defendants deny the same and demand strict proof at the trial of this cause.

The defendants further aver that they have no knowledge as to whether the plaintiffs have entered into an agreement with Jehovah God or entertained the beliefs referred to in paragraph eight, and since the means of proving said

allegation are under the exclusive control of plaintiffs, defendants demand strict proof at the trial of this cause. Defendants further aver that they have no knowledge concerning the nature or character of the agreement or covenant entered into by members of Jehovah's Witnesses or as to the beliefs of the members of said association as set forth in paragraph eight, and therefore, defendants deny the same, and, if material, demand strict proof thereof at the trial of this cause.

Defendants further specifically deny that the act of saluting the national flag is a violation of the divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, and that the act of saluting the flag means in effect that the persons saluting the flag ascribe religious salvation to the power for which the flag stands, and that saluting the flag contravenes any express command in the Bible. On the contrary, defendants aver that the act of saluting the national flag is not an act of a religious nature or character whatsoever, but is merely an acknowledgment of the temporal sovereignty of the United States of America; which does not go beyond that which is reasonably due to any government.

9. Defendants aver that they have no knowledge concerning the truth or falsity of the allegations in paragraph nine of plaintiffs' bill of complaint, and that since the means of proving said allegations are under the exclusive control of plaintiffs, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

10. Denied. Defendants deny that the complainants honor and respect their country and state and willingly obey its laws. On the contrary, defendants aver that the minor plaintiffs, by failing to salute the national flag at the daily opening of the Minersville Public Schools, and the father plaintiff by his teachings, acquiescence and ratification of said conduct, have knowingly and wilfully dishonored and been disrespectful to their country and state and have violated its laws.

Defendants further aver that they have no knowledge concerning the beliefs of the plaintiffs as set forth in paragraph ten of the bill of complaint, and since the means of proving the same are under the exclusive control of plaintiffs, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

11. Defendants admit the allegations in paragraph eleven.

12. Defendants have no knowledge regarding the allegations set forth in paragraph twelve of the bill of complaint, and since the means of proving the same are under the exclusive control of the minor plaintiffs, defendants deny the same and demand strict proof thereof at the trial of this cause.

13. Defendants admit the allegations in paragraph thirteen.

14. Defendants admit the allegations in paragraph fourteen.

15. Defendants aver upon advice of counsel that the allegations in paragraph fifteen are conclusions of law which need be neither admitted nor denied by defendants.

Defendants further aver that in lieu of attending the Minersville Public Schools or a private school the statutory requirement of attendance would be met by the minor plaintiffs attending a public school in an adjoining school district.

16. Defendants have no knowledge as to the financial ability of Walter Gobitis to have his children attend a private school or to obtain for them equivalent instruction elsewhere than at the Minersville Public Schools, and since the means of proving the same are under the exclusive control of Walter Gobitis, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

17. Defendants aver upon advice of counsel that the allegations in paragraph seventeen are conclusions of law which need be neither admitted nor denied by defendants. Defendants further aver, for the reasons as set forth in the within answers, that the plaintiffs have neither sustained nor are sustaining any injury or damage for which the defendants are liable.

18. Defendants aver upon advice of counsel that the allegations in paragraph eighteen are conclusions of law which need be neither admitted nor denied by defendants. Defendants, however, further aver upon advice of counsel that the said regulation of the Board of Education does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States; that said regulation does not deny to the plaintiffs liberty and rights or property without due process of law; that said regulation does not deny to the plaintiffs equal protection of the laws, and that said regulation does not deny to the plaintiffs the freedom to worship Almighty God according to the dictates of their consciences.

19. Defendants aver upon advice of counsel that the allegations in paragraph nineteen are conclusions of law which need be neither admitted nor denied by defendants. Defendants, however, further aver upon advice of counsel that said regulation does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, so far as it is applicable to the minor plaintiffs; that said regulation does not unreasonably restrict the minor plaintiffs' freedom of religious belief and worship and their free exercise thereof; that it does not unreasonably restrict the freedom of speech of said minor plaintiffs; that said regulation does not discriminate against children in the public schools as distinguished from the rest of the population, nor deny to the minor children protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution.

20. Defendants aver upon advice of counsel that the allegations in paragraph twenty are conclusions of law which need be neither admitted nor denied. Defendants, however, further aver upon advice of counsel that said regulation as applied to the minor plaintiffs does not violate the Eighth Amendment to the Constitution of the United States, and that the adoption and enforcement of said regulation has not inflicted upon the minor plaintiffs any cruel and unusual punishments, but that the minor plaintiffs by their conduct have subjected themselves to the punishment of having been expelled from the Minersville Public Schools and subjected themselves to penalties of juvenile delinquency.

21. Defendants aver upon advice of counsel that the allegations in paragraph twenty-one are conclusions of law which need be neither admitted nor denied. Defendants, however, further aver upon advice of counsel that said regulation as applied to the plaintiff, Walter Gobitis, does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States; that said regulation does not unreasonably restrict the liberty of Walter Gobitis in the education of his children at free public schools; that said regulation does not unreasonably restrict the liberty of Walter Gobitis, and that the adoption and enforcement of said regulation has not unreasonably subjected Walter Gobitis to prosecution and punishment under the laws of this Commonwealth, but that Walter Gobitis by his conduct, as well as the conduct of his children, has subjected himself to possible prosecution under the compulsory school attendance laws of this Commonwealth; that said regulation does not unreasonably restrict the liberty of Walter Gobitis to freely impart to his children Bible teachings and a manner of worship according to the dictates of his conscience, and that said regulation does not deny Walter Gobitis a property right to have his minor children educated in the Minersville Public Schools without charge. Defendants further aver upon advice of

counsel that the privilege to have his children attend the public schools is not a property right which will be protected in this or any other proceeding, but is merely an advantage bestowed upon the plaintiffs by this Commonwealth.

22. Defendants aver upon advice of counsel that the allegation that the acts, conduct and decisions of the defendants cannot be justified under the police power is a conclusion of law which need be neither admitted nor denied. The defendants, however, deny that the failure and refusal of the minor plaintiffs to salute the national flag does not and cannot affect the public interest or safety or the rights and welfare of others. On the contrary, defendants aver that the adoption of the regulation referred to in plaintiffs' bill of complaint and its enforcement was not in violation of any provision in the state or federal constitutions or of any law of this Commonwealth or of the United States; that said regulation was adopted pursuant to the provision in the School Code, Act of May 16, 1911, P. L. 309, as amended, (24 P. S., Section 1551) requiring that "civics, including loyalty to the state and national government" be taught in every elementary public school; that said regulation was adopted by the Board of Education of Minersville Public Schools as a method of teaching loyalty to the state and national government; that in the opinion of the Board of Education the act of saluting the national flag, as provided in said regulation, is a necessary and reasonable method of teaching loyalty to the state and federal government and of inculcating patriotism and love of country into the young citizens of this nation; that the failure or refusal of any pupil or group of pupils to salute the national flag would be disrespectful to the government of which the flag is a symbol and would tend to promote disrespect for that government and its laws, with the result that the public welfare and safety and well-being of the citizens of the United States would be ultimately harmed and seriously affected thereby.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as your Hon-

orable Court shall direct, and humbly pray to be dismissed
with their reasonable costs and charges in this behalf most
wrongfully sustained.

MINERSVILLE SCHOOL DISTRICT,

By DR. A. E. VALIBUS.

BOARD OF EDUCATION OF MINERSVILLE
SCHOOL DISTRICT,

By DR. A. E. VALIBUS.

DAVID I. JONES.

DR. A. E. VALIBUS.

CLAUDE L. PRICE.

DR. T. J. MCGURL.

GEORGE BEATTY.

THOMAS B. EVANS.

WILLIAM ZAPP.

CHARLES E. ROUDABUSH.

JOHN B. MCGURL,

RAWLE & HENDERSON,

By JOSEPH W. HENDERSON,

Attorneys for Defendants.

STATE OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } ss.:

DR. A. E. VALIBUS, being duly sworn according to law, deposes and says that he is president of Minersville School District, one of the defendants named in the foregoing answers; that he is authorized to and does make this affidavit on its behalf; that he has read the said answers and the facts therein stated as are within the deponent's knowledge are true and correct, and as to the other facts, he is informed of, believes and therefore avers the same to be true and correct, and so expects to be able to prove at the trial of this cause.

DR. A. E. VALIBUS.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,
(Seal) *Notary Public.*

My commission expires March 2, 1941.

STATE OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } ss.:

DR. A. E. VALIBUS, being duly sworn according to law, deposes and says that he is president of the Board of Education of Minersville School District, one of the defendants named in the foregoing answers; that he is authorized to and does make this affidavit on its behalf; that he has read the said answers and the facts therein stated as are within the deponent's knowledge are true and correct, and as to the other facts, he is informed of, believes and therefore avers the same to be true and correct, and so expects to be able to prove at the trial of this cause.

DR. A. E. VALIBUS.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,
(Seal) *Notary Public.*

My commission expires March 2, 1941.

STATE OF PENNSYLVANIA, }
COUNTY OF SCHUYLKILL, } ss.:

DAVID I. JONES, DR. A. E. VALEBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, GEORGE BEATTY, THOMAS B. EVANS, WILLIAM ZAPF and CHARLES E. ROUDABUSH, being duly sworn according to law, jointly and severally depose and say that they are the defendants named in the above cause; that they have read the foregoing joint and several answers; that each deponent further avers and says that the facts set forth in the foregoing joint and several answers as are within his own knowledge are true and correct, and that as to all other facts, the deponent is informed of, believes and therefore avers the same to be true and correct and so expects to be able to prove at the trial of this cause.

DAVID I. JONES.

DR. A. E. VALEBUS.

CLAUDE L. PRICE.

DR. T. J. MCGURL.

GEORGE BEATTY.

THOMAS B. EVANS.

WILLIAM ZAPF.

CHARLES E. ROUDABUSH.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,

(Seal)

Notary Public.

My commission expires March 2, 1941.

**SUGGESTION OF DEATH OF GEORGE H. BEATTY,
ONE OF THE DEFENDANTS.**

(Filed April 5, 1938.)

AND NOW, to WIT, this fifth day of April, A. D. 1938, it is suggested of record that George H. Beatty, one of the defendants in the above-entitled case, died on the thirtieth day of January, A. D. 1938.

JOHN B. MCGUIR,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

ORDER.

(Filed August 2, 1938.)

And now, to wit this second day of August A. D., 1938, the attached stipulation of counsel for the respective parties in the above-entitled cause having been presented to and maturely considered by the Court,

IT IS ORDERED that the statement of evidence taken upon the trial of the above-entitled cause, in the condensed narrative form attached to said stipulation, be and the same hereby is approved and the said narrative statement shall be filed in the clerk's office and become a part of the record for the purposes of appeal.

By THE COURT,

MARIS, J.

STIPULATION.

(Filed August 2, 1938.)

It is hereby stipulated and agreed by and between Harry M. McCaughey, Esquire, attorney for plaintiffs and John B. McGurl, Esquire, and Rawle & Henderson, Esquires, attorneys for defendants, that the statement of testimony and evidence taken upon the trial of the above-entitled cause, in the condensed narrative form thereof attached hereto, may be approved by the Court, and, subject to the approval of the Court, become a part of the transcript of record to be certified to the United States Circuit Court of Appeals for the Third Circuit, and that all formalities regarding preparation, lodgment, notice, presentation, approval and filing of said condensed statement of evidence is hereby expressly waived.

H. M. McCAUGHEY,

Attorney for Plaintiffs.

JOHN B. MCGURL,

RAWLE & HENDERSON,

By JOSEPH W. HENDERSON,

Attorneys for Defendants.

STATEMENT OF EVIDENCE.

•(Filed August 2, 1938.)

Be it remembered that upon the final hearing of the above-entitled matter on bill, answer and proofs on the fifteenth day of February, A. D. 1938, before the Honorable Albert B. Maris, then District Judge for the Eastern District of Pennsylvania, at Philadelphia, Pennsylvania, the following proceedings were had and evidence introduced which is hereby reduced to narrative form pursuant to Equity Rule 75.

The plaintiffs appeared by O. R. Moyle, Esquire, and Harry M. McCaughey, Esquire, as counsel.

The defendants appeared by John B. McGurl, Esquire, Joseph W. Henderson, Esquire, and George M. Brodhead, Jr., Esquire, as counsel.

Immediately prior to the presentation of plaintiffs' case, counsel for the defendants made the following motion to dismiss plaintiffs' bill of complaint.

MR. HENDERSON: May it please the Court, this matter was first brought before you on a bill in equity filed by the complainants, and then a motion to dismiss filed by the school board, the Minersville School District. Your Honor has ruled upon that and is familiar with the matter.

Since that time we have filed an answer. I now, therefore, wish to file a further motion to dismiss the bill of complaint, and if your Honor desires, I want to set forth the same motion that I did with reference to the motion to dismiss before we filed an answer, and for the purpose of the record it may appear, and I can just ask the stenographer to copy it.

THE COURT: Very well.

MR. HENDERSON: Exactly the same motion that we filed before, a motion to dismiss.

THE COURT: You may submit it to the stenographer.

MR. HENDERSON: From 2 to 6 inclusive, which are exactly the same ones that are in the record already.

"MOTION TO DISMISS BILL OF COMPLAINT"

NOW COME MINERSVILLE SCHOOL DISTRICT: BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, consisting of DAVID I. JONES, DR. E. A. VALZBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, GEORGE BEATTY, THOMAS B. EVANS and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, superintendent of Minersville Public Schools, defendants, by their attorneys John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above-entitled case upon grounds and reasons therefor as follows:

1.
2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of \$3000.00 exclusive of interest and costs.
3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.
4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.
5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.
6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought."

MR. HENDERSON: Therefore, if your Honor please, we object to the taking of any testimony in this case upon the ground set forth in those motions.

THE COURT: For the reasons set forth in the opinion of the Court heretofore filed, the motion to dismiss is overruled, with an exception to the defendants.

PLAINTIFFS' EVIDENCE.

The plaintiffs introduced into evidence paragraphs 1, 2, 3, 4, 7, 11, 13 and 14 of their bill of complaint together with the specific admissions in the corresponding paragraphs of defendants' answer, as follows:

MR. MOYLE: May it please the Court, the answer filed by the defendant admits certain allegations of the complaint, and we would offer those allegations in evidence at this time.

"1. That Walter Gobitis is the father of Lillian Gobitis and William Gobitis, who are minors, and is a natural-born citizen of the United States and of the Commonwealth of Pennsylvania, and resides at 15-17 Sunbury Street in the City of Minersville, Pennsylvania, and brings this petition individually, and as next friend of Lillian Gobitis and William Gobitis, minors."

And 2—

THE COURT: You better read the answer into the record.

MR. MOYLE: The answer as to paragraph 1:

"1. The defendants admit the allegations in paragraph one," which I have just read.

THE COURT: Very well, then, proceed with the others. I just wanted the record to show the allegation and the answer.

MR. MOYLE:

"2. That Lillian Gobitis, age 13 years, and William Gobitis, age 12 years, are minors and residents of Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years."

The answer as to paragraph 2 reads:

"2. The defendants admit the allegations in paragraph two."

Paragraph 3 of the bill reads as follows:

"3. That the Minersville School District is a public school district embracing the City of Minersville, Schuylkill County, Pennsylvania, and adjacent territory, under and by virtue of the laws of the Commonwealth of Pennsylvania; that the defendants David L. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, and William Zapf are now and at all times material hereto, constitute the duly elected, qualified and acting Board of Education of such school district and as such are a body politic and corporate in law and have the management and control of the Minersville Public Schools; that the defendant Charles E. Roundabush, is the superintendent of the Minersville Public Schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States."

The answer as to paragraph 3, reads as follows:

"3. The defendants admit the allegations in paragraph three except the allegation that said school district embraces territory adjacent to Minersville, Pennsylvania. On the contrary, defendants aver that

said school district embraces only the Borough of Minersville. Defendants further aver that David I. Jones is no longer a member of the Board of Education of Minersville School District, having been succeeded by Dr. E. W. Keith, subsequent to the filing of Complainants' Bill in Equity."

Paragraph 4 of the bill reads as follows:

"4. That the aforesaid Minersville Public Schools were and are free public schools, and are under the supervision and jurisdiction of the said Board of Education."

The answer as to paragraph 4 reads as follows:

"4. The defendants admit the allegations in paragraph four."

Paragraph 7 of the bill reads as follows:

"7. Complainants further allege that heretofore, to wit, on the 6th day of November A. D. 1935 at a regular meeting of the said Board of Education of the Minersville Public Schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

'That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly.' "

The answer as to paragraph 7 reads as follows:

"7. Defendants admit the allegations in paragraph seven.

Defendants further aver that said regulation was reasonable, and that the adoption thereof was within the authority of the Board of Education of Minersville

Public Schools and did not violate any Federal or State statute or any provision in the Constitution of the United States or the Constitution of the State of Pennsylvania.

Defendants further aver that subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public Schools at the opening of school to rise, place their right hands on their respective breasts and to speak the following words: 'I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all.' The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag."

Paragraph 11 of the bill reads as follows:

"11. That at the meeting of the Board of Education of the Minersville Public Schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in paragraph VII of this complaint, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, as complainants are informed and believe, publicly announced, 'I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Waslewski for this act of insubordination, to wit, failure to salute the flag in our school exercises.'"

As to paragraph 11, the answer of the defendants reads as follows:

"11. Defendants admit the allegations in paragraph eleven."

Then as to paragraph 13 of the bill, it reads as follows:

"13. That since the 6th day of November A. D. 1935 the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and have not attended their respective classes in the aforesaid Minersville Public Schools."

As to paragraph 13, the answer of the defendants reads:

"13. Defendants admit the allegations in paragraph 13."

Paragraph 14 of the bill reads as follows:

"14. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the alleged refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to."

As to paragraph 14, the answer reads:

"14. Defendants admit the allegations in paragraph fourteen."

I believe that covers all that are to be admitted.

THE COURT: Very well.

WALTER GOBITIS was the first witness to testify on behalf of the plaintiffs. He testified that he has lived in Minersville, Pennsylvania, all his life except for one year when a little boy; that he owns his own place and is a taxpayer; that his children, William Gobitis and Lillian Gobitis, attended the Minersville Public Schools until November 5, 1935, since which time Lillian Gobitis has attended a private school, called Jones Kingdom School, at Andreas, Pa., thirty miles east of Minersville, and Pottsville Business College, four miles distant from Minersville; and William Gobitis has attended the Jones Kingdom School at Andreas, Pennsylvania; and that prior to their expulsion he had

never received any complaints regarding his children obeying the rules and regulations of the school.

When interrogated as to his religious beliefs, Walter Gobitis testified as follows:

By MR. MOYLE:

Q. What is your religious belief?

A. I am a true and sincere follower of Christ Jesus, the Son of Jehovah God.

By MR. HENDERSON:

Q. Not too fast; I want to get it.

A. I am a true and sincere follower of Christ Jesus, the Son of Jehovah God.

By MR. MOYLE:

Q. What association or group of followers of Christ Jesus are you connected with or a part of?

A. There are many others like myself who belong to—

MR. HENDERSON: We object to that. Just answer the question, if you please.

By THE COURT:

Q. Are you a member of an organized group of Christians? That is the question. What is the name of the group?

A. I am a part of an unincorporated association of Christian people called Jehovah's Witnesses.

By MR. MOYLE:

Q. What is the relationship of Jehovah's Witnesses to their Creator, Jehovah God?

MR. HENDERSON: Just wait on that a moment.

By MR. HENDERSON:

Q. Do you have any written creed or doctrine?

A. Yes, we believe the Bible—

Q. No.

By THE COURT:

Q. Listen to the question and we will get along better. Do you have a written creed or statement of your principles which has been agreed upon by your group as representing your principles of belief?

A. Yes, the Bible is that creed.

Q. You have no other?

A. No.

By MR. MOYLE:

Q. In accordance with the teachings of the Bible, then, what is your relationship to the Creator so far as obeying his commandments is concerned?

MR. HENDERSON: I object to the form of that question, your Honor.

MR. MOYLE: That is proper, that is one of the allegations.

MR. HENDERSON: He can testify what his beliefs are, but I don't believe in accordance with the teachings of the Bible.

MR. MOYLE: All right, we will eliminate that.

THE COURT: Rephrase the question.

By MR. MOYLE:

Q. What is your belief, then, as to your relationship to Jehovah God?

A. As a follower of Christ Jesus, we must obey the commandments of God and preach the gospel of the kingdom.

Q. What agreement or covenant have you as a Christian entered into with Jehovah God?

A. That I would do that to the best of my ability.

MR. HENDERSON: If your Honor please—well, I will reserve that for cross-examination.

By MR. MOYLE:

Q. What is your belief as to the act of saluting a flag?

A. It is contrary to the commandment of God, to the second commandment, as stated in Exodus, 20th chapter, 3d verse and 4th verse.

By THE COURT:

Q. Will you state that? What is that so we will have it here?

By MR. MOYLE:

Q. Can you state that commandment offhand?

A. Yes.

"Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me;

And showing mercy unto thousands of them that love me, and keep my commandments."

Q. You say that you believe that this applies to the act of saluting the flag, is that it?

A. I do.

Q. Is that the reason, if you know, why your children, William and Lillian Gobitis, refused to salute the flag in the Minersville Public Schools?

A. I think so.

Q. Have you talked with them or taught them that belief?

A. Well, I have taught them to believe and study the Bible for a long time, and they were baptized to serve God, too, and as we were talking things over at home, no doubt they got a lot of knowledge in that respect concerning idolatry, we have talked about that.

MR. HENDERSON: Your Honor, I ask the answer be stricken out as not responsive.

THE COURT: I think it is responsive; motion refused.

By MR. MOYLE:

Q. Is there any other reason from the standpoint of your sincere belief why you, as a Christian, would not salute the flag?

A. As the flag is used today, it is an image or likeness of something, and is worshiped, and the commandments of God are that we should not worship images or partake of idolatry.

The witness then testified that from the last week of December, 1935, to the end of May, 1937 (except for holidays and vacation periods), Lillian Gobitis attended the Jones Kingdom School at Andreas, Pennsylvania, and from September, 1937, to the date of hearing, to wit, February 15, 1938 (except for holidays and vacation periods) his daughter, Lillian, attended the Pottsville Business College, and that William Gobitis attended the said Jones Kingdom School from the last week of December, 1935, to the date of hearing, to wit, February 15, 1938, each of which schools are private schools as distinguished from public schools maintained by the State. The witness further testified that the pupils attending the Jones Kingdom School are only members of the sect called "Jehovah's Witnesses" and are only those which have been expelled from the public schools because they refused to salute the flag.

Walter Gobitis next testified regarding the moneys which he had already expended, subsequent to November, 1935, in connection with the education of his two minor children and what he would be required to expend in the future. The witness produced various receipted bills for the years 1935, 1936 and 1937 and testified as follows concerning the same:

By MR. MOYLE:

Q. Will you produce the bill for expense for the first year, 1935 and 1936? I will ask you, first, you have a receipted bill showing what you have paid for, do you?

A. I do.

Q. Will you produce that?

(Papers were produced by the witness.)

By MR. MOYLE:

Q. Will you produce all of your bills, then, of 1935 and 1936? Do you have any bills there for books, heat, light, and so on?

(Papers were produced by the witness.)

Q. Do you have those for transportation?

(Papers were produced by the witness.)

Q. And board?

(Papers were produced by the witness.)

Q. These are all 1935 and 1936?

A. Tax receipts for the borough or not?

Q. Not at this time, I want to get these in. Are these the bills for 1935 and 1936?

A. They are, excepting the first one there for tuition.

By MR. HENDERSON:

Q. That is for 1937, as well?

A. That's right.

By MR. MOYLE:

Q. What other receipts have you got?

MR. HENDERSON: Can we stick to one thing? Are these the school bills?

By MR. MOYLE:

Q. What other expenses do you have besides actual expenses of this school?

A. Well, I have attorneys' fees.

Q. On what?

A. I tried to get in touch with a lot of lawyers; I spent a lot of time and money getting advice what to do in the beginning.

MR. HENDERSON: I object to that, if your Honor please.

MR. MOYLE: That is expense.

MR. HENDERSON: I object to that as improper testimony in this case.

THE COURT: Objection sustained.

By MR. MOYLE:

Q. Any other bills? You mentioned something about a tax bill, is that school tax?

A. Yes, school tax bill, I have 1935, and 1937, and for the 1936 period I have only a cancelled check, I can't find the bill.

Q. Does that cancelled check represent your school tax?

A. That's right.

MR. HENDERSON: Mr. Moyle, if you propose to introduce these checks or any tax bills, I propose to object to them as not being a proper item of expense arising from the jurisdictional question in this case. They are property taxes.

MR. MOYLE: I suppose there might be some question on that, but it seems reasonable to me—

THE COURT: I don't think it possibly can form part of the question here. They are payable, whether he has children or not. He might have no children in school, and pay it just the same.

MR. HENDERSON: Do these represent the bills, otherwise?

MR. MOYLE: For the first year, 1935 and 1936, yes; that doesn't represent all of his bills. Do you want them all?

MR. HENDERSON: I understood him to say they went to a school at Andreas, Pa. I thought it was the Jones School; these bills say on them the Kingdom School. Is that the same thing?

MR. MOYLE: Same thing.

THE WITNESS: Same thing, yes.

MR. MOYLE: No objection to these being offered?

MR. HENDERSON: Yes, I have a very serious objection to their being offered, because, apparently, they have the expenses of his car from 1935 to date. That is the biggest item he has. The others I would like to cross-examine on.

THE COURT: Why don't you have them identified, and then examine the witness as to each one?

MR. MOYLE: All right.

THE COURT: Better have them marked.

MR. MOYLE: Mark all of those separately.

By MR. MOYLE:

Q. This bunch clipped together represents automobile bills, does it?

A. Automobiles, gas, repairs, yes, on that little slip.

Q. And this one represents tuition?

A. Tuition.

MR. MOYLE: I ask that be marked as Exhibit A.

(Tuition bill of the Kingdom School in the amount of \$118 was marked Plaintiffs' Exhibit A.)

By MR. MOYLE:

Q. This one for \$120 represents board and lodging, does it, for the children at the school?

A. That's right.

THE COURT: You are asking what they are; have they been marked?

MR. MOYLE: I was going to ask to have them marked after I ask him about them.

THE COURT: You better have them marked before you ask him.

MR. MOYLE: I ask that that be marked as Exhibit B.

(A bill for board and lodging dated February 11, 1938, was marked Plaintiffs' Exhibit B.)

By MR. MOYLE:

Q. I will show you Exhibit B and ask you if that is the bill representing expenses for board and room for the children in the school?

A. That's right, at the home next door to the school.

Q. And Exhibit A is a bill representing the tuition cost?

A. That's right.

MR. HENDERSON: If your Honor please, I am reserving my objections to those—

THE COURT: They have not been offered yet.

MR. MOYLE: I ask that this be marked Exhibit C.

MR. HENDERSON: That is going to complicate it very much if you mark that batch Exhibit C.

THE COURT: Oh, yes, if it is all of the same class mark them as one exhibit.

MR. HENDERSON: I don't know how that will be, your Honor, but, however, we will see how we get along.

THE COURT: All right.

(A group of bills for automobile and transportation expenses were marked Plaintiffs' Exhibit C.)

By MR. MOYLE:

Q. I present to you Exhibit C; is that the receipted bills representing your automobile and transportation expenses for the children?

A. Yes.

Q. These are for the year 1935 and 1936, the school year?

A. Only one week of 1935.

By THE COURT:

Q. You mean one week of the calendar year 1935?

A. That's right.

Q. But it is for so much of the year of 1936 and 1935 as the children were in the present school?

A. One week of 1935.

Q. Well, I don't think you understand what I am asking you. There is such a thing as a school year, it begins in the fall and ends in the spring. It was the school year 1935-1936, beginning in the fall of 1935 and ending in the spring. The early part of that year they were in public school?

A. That's right.

Q. And some portion of that year they were in private school?

A. That's right.

Q. These bills represent a portion of that school year they were in private school, do they not?

A. That's right.

MR. MOYLE: We will offer these in evidence.

MR. HENDERSON: I object, if your Honor please.

THE COURT: Upon what ground? Which are you offering?

MR. MOYLE: Exhibits A, B and C.

THE COURT: Let's take them one at a time.

MR. MOYLE: I will withdraw that. I will offer Exhibit A, which represents the tuition expense.

MR. HENDERSON: I would like to ask a few questions to see if we want to object to it.

THE COURT: Very well, you may examine the witness.

CROSS-EXAMINATION.

By MR. HENDERSON:

Q. Mr. Gobitis, this particular bill has a name on it of Walter C. Knepper, of Tamaqua, Pa.; who was Mr. Knepper?

A. He is treasurer of our school board that we got together to handle the funds to pay the bills.

Q. You wrote up this receipt, did you?

A. No, he sent it to me.

Q. You have "Gobitas paid January 3, 1936," through to October 18, 1937, a total of \$118. How do you arrive at those figures?

A. They were the actual payments I made on the dates I made them. I never kept receipts for every payment I made, and they never issued any.

Q. These are the payments you made to Mr. Knepper?

A. The record as that appeared on their books.

Q. For what purpose?

A. Paying for the teachers, only, and books, and some paraphernalia we have to pay.

Q. This represents the money you actually turned over to this church school?

A. It is not a church school.

Q. I am not trying to confuse you.

A. Private school.

Q. To a private school for the expenses of your two children, or for one child, or for what?

A. For two children, just for the teacher and some books.

By THE COURT:

Q. Was that your share of the expenses?

A. My share, yes.

Q. Computed, I suppose, in proportion because you had two children as related to the total number of children in the school?

A. Yes.

By MR. HENDERSON:

Q. Mr. Gobitas, were both of your children there last fall?

MR. MOYLE: That is objected to.

By MR. HENDERSON:

Q. 1935?

A. 1936 we are talking about, aren't you?

Q. Your bill is through to October, 1937.

A. You can strike out and change the total bill there where it ends at that particular time.

By THE COURT:

Q. Were your children there in 1937?

A. One was not, one already started in the fall of 1937 in the Pottsville Business College.

MR. HENDERSON: That is what I wanted to know.

By THE COURT:

Q. Is the other one still there?

A. The other one is still there in private school.

By MR. HENDERSON:

Q. Mr. Gobitas, why are the payments in the fall of 1937 when you had only one child there so much higher than they were during the winter of 1937 and the fall of 1936?

A. I don't say they are higher.

Q. Yes, they are quite a bit. They run \$6 for two children, and then they run \$8 for one child. Can you answer that?

A. The school term was only from December 29th until April, that's about four months, and the other is an eight-month period.

Q. Do you understand my question?

A. But per month is according to family arrangement.

Q. On September 8, 1937, which, I take it, is when the school opened last fall—

A. I thought you were back in 1936.

Q. I will come back in just a moment. Is that the time your school opened?

A. Yes.

Q. At that time you had one child in the school?

A. That's right.

Q. From September 8, 1937, your next payment is October 18, 1937, is that correct?

A. Yes.

Q. Your first payment was \$8.60?

A. Yes.

Q. Now, there seems to be from January 15, 1937, to February 15, 1937, \$5.30 for two children; from February 15, 1937, to March 22, 1937, was \$6.30. I am only asking what made the great increase in the fall of 1937 over the spring of 1937. At one time you had two children, and then at the other time you had one.

A. It costs still more than that—

Q. Can you answer my question? Now, let's stick right to this one question.

A. According to the paraphernalia that was bought. They needed equipment for the school, and according to the families that were in the school at that time we paid. The rates varied.

Q. I see. That represents the total amount of tuition that you have paid to this private school?

A. That was used for tuition and books.

Q. \$118. Now, Mr. Gobitis, you present here a receipt which apparently you have just procured a couple of days ago, dated February 11, 1938.

A. That's right.

Q. For board and lodging in the sum of \$6 per week for twenty weeks from December 21, 1935, to May 2, 1936. Who wrote up that paper?

A. I did.

Q. For what purpose?

A. I never had any receipts; or never got any, because we didn't just get them, and I went back to that woman and asked her would she give me a written receipt showing how much money I paid out, and we computed it, wrote it down, she read it and signed her name and had the witness to it.

Q. From December 21, 1935, to May 2d, 1936, your school has twenty weeks, is that right?

A. That's right.

Q. During that time your children were in the home of this Verna S. Jones?

A. That's right.

Q. And she charged you \$6 a week; during any of that time did the children come to you at Minersville?

A. Yes, they came home every Friday, and Monday they would go back to school.

Q. Every Friday at what time?

A. About four, five, six o'clock in the evening.

Q. And they would be, then, at your home until—

A. Monday morning, again, at sixty to seven-thirty.

Q. Outside of week-ends, from December, 1935, to May 2d, 1936, they were in the house of this Verna S. Jones, to whom you paid \$120?

A. Yes, sir.

MR. HENDERSON: If your Honor please, I would like to have the stenographer hand up to you what has been marked as Exhibit C and I call your Honor's attention to the fact that that seems to be expenses for a truck.

By MR. HENDERSON:

Q. And do you have a truck?

A. Two trucks and a car.

Q. Well, it is the car that you have the loud speakers on?

A. No, sir, the truck is in my shop.

Q. And your business is what, Mr. Gobitas?

A. Retail meat market, produce, and grocery store.

Q. So, you run a truck; in addition to that, you run an automobile?

A. That's right.

Q. And which is the one that you have the loud speakers on?

A. In the car.

Q. Which one do you have it on?

A. I have it on my trailer attached to my car, my private sedan.

Q. These bills here represent the expense for your truck?

A. They represent all the expenses of all my cars. That small piece of paper is a memorandum taken from my books. My bookkeeper made that for the whole year, and those bills are only presented as proof I have paid out that money on oil, gas and repairs on those cars.

Q. On all those occasions?

A. Yes, sir.

MR. HENDERSON: If your Honor please, I object to that.

THE COURT: What is the relevancy of these automobile bills, truck bills, and so forth?

THE WITNESS: I don't have them separate.

DIRECT EXAMINATION (Continued).

By MR. MOYLE:

Q. What transportation did you furnish for your children? Where did you take them to? This Andreas school, how far is it?

A. Sixty miles every day a trip, and I used any one of the three cars.

By THE COURT:

Q. You didn't go every day?

A. It is only a twenty-week period.

Q. They boarded there from Monday to Friday?

A. For twenty weeks during the real severe weather, the other times I went every day.

MR. HENDERSON: These bills run from December to May; I imagine that is about when the school closed. I object to the bills, if your Honor please.

THE COURT: Objection sustained. You might show the number of times, if you can, that he transported them, and the distance. I think from that we might get a general idea.

By MR. MOYLE:

Q. How many trips did you make to take the children back and forth?

A. Twice a week.

MR. HENDERSON: If your Honor please, I wasn't able to hear that.

THE COURT: He says twice a week.

By THE COURT:

Q. In other words, you brought them home Friday and took them back on Monday, that was two round trips per week?

A. That's right.

By MR. MOYLE:

Q. How far is it?

A. Thirty miles one way.

Q. That is sixty miles, so you had at least two hundred and forty miles a month, each month, is that right?

A. That's right.

THE COURT: Twice that much.

MR. HENDERSON: You are quite correct, if your Honor please, one hundred and twenty miles a week.

MR. MOYLE: That's right.

By MR. MOYLE:

Q. Did you take them back and forth daily some of the time?

A. Sometimes daily.

Q. Do you know how often that was done?

A. In the first year they boarded there nearly all the time except some weeks when you couldn't get there. They stayed there all the time; sometimes we skipped a week or two, I didn't go for them.

Q. You don't have definite figures?

A. No.

Q. But you did make this trip back and forth each week?

A. That's right, every week.

Q. During the period. What car did you use?

A. Any one of the three which was convenient.

Q. Do you know what it costs you a mile to run your car?

A. Yes, sir.

MR. HENDERSON: Now, if your Honor please, I object to this, I think it is purely conjectural. There is nothing definite upon which to base it. He even says during part of this time in the winter he never even made any trips, there were some weeks he didn't even go at all. He doesn't pick up and go every time he wants to see his children; if he does, I don't think it can be put on the school district.

MR. MOYLE: It isn't being put on the school district.

MR. HENDERSON: It is a basis for the damage, which arrives at the same conclusion.

THE COURT: I will overrule the objection.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Exception to the defendants.

By MR. MOYLE:

Q. The question was do you know what it costs a mile to operate the car.

A. Yes, about easily eight cents a mile.

By MR. HENDERSON:

Q. Eight cents a mile?

A. We figure it both ways, four cents one way.

By MR. MOYLE:

Q. That is four cents a mile instead of eight cents?

By THE COURT:

Q. You are speaking of—I was going to say political method—maybe you call it the constable's method of so many miles in a circle?

A. I heard so much difference of opinion on how much it costs to run one; I don't know exactly what it costs, I never kept records of it.

Q. You estimate four cents a mile, as nearly as you can tell?

A. Yes.

MR. HENDERSON: I renew my motion, if your Honor please, to strike out all this testimony as being entirely conjectural and not being based on facts.

THE COURT: I think he has operated a car sufficiently to estimate it. I will overrule the motion, exception for the defendants.

By MR. MOYLE:

Q. That continued through that school year?

A. That's right.

MR. MOYLE: We would offer these other two exhibits, B and A in evidence.

THE COURT: They were offered, weren't they?

MR. MOYLE: Yes, I don't know whether they had been accepted or not.

THE COURT: I am not sure. If you haven't offered them, note the witness examined them, and they are offered in evidence. Any objection?

MR. HENDERSON: No objection.

THE COURT: They will be admitted.

(A copy of Plaintiffs' Exhibit A follows:

"Copy Feb. 10, 1938

KINGDOM SCHOOL

Gobitas Paid Jan. 3, 1936

" Feb. 17, 1936

Year 1936

& 1937

16.67

12.50

Walter Gobitis

65

Gobitas Paid March 6, 1936	13.84
" " April 25, 1936	13.19

Total from Jan. to April for 1936	56.20
15 to 30, 1936	

Gobitas Paid Sept. 18, 1936	2.75
" " Oct. 2, 1936	5.75
" " Nov. 14, 1936	6.00
" " Dec. 7, 1936	6.30
" " Jan. 15, 1937	6.30
" " Feb. 15, 1937	6.30
" " Mar. 22, 1937	6.30
" " April 6, 1937	6.30

TOTAL FOR 1936 &	\$102.20
Part of 1937	

for 1937	
Gobitas Paid Sept. 8, 1937	8.60
" " Oct. 18, 1937	7.20

TOTAL	\$118.00
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Walter C. Knepper,
Tamaqua
Pa. R # 3
Treasurer."

PLAINTIFFS' EXHIBIT B.

"February 11, 1938

For Board and Lodging for Lillian and William Gobitas, I received from Walter Gobitis the sum of \$6.00 per week for 20 weeks or total of \$120.00.
From Dec. 21, 1935 to May 2nd, 1936.

/s/ Verna S. Jones

Witness .

/s/ Erma Metzger.")

By MR. MOYLE:

Q. Now, Mr. Gobitis, as to the school year 1936 and 1937, will you produce receipted bills you have covering tuition?

MR. HENDERSON: And they are all here?

THE WITNESS: They are only on the one year's tuition in 1937 and 1936. 1937 and 1936 is on that Exhibit A. There is another one for the following year, and here are some for the Pottsville Business College in 1937.

By MR. HENDERSON:

Q. Well, Mr. Gobitis—

MR. HENDERSON: May I question him?

MR. MOYLE: Go ahead.

CROSS-EXAMINATION (Continued).

By MR. HENDERSON:

Q. This is another receipt made up February 11, 1938, that Mrs. Jones received \$72 for board for Lillian and William Gobitis, and for lodging for three months, January, February and March, of 1937, is that right?

A. That's right.

Q. And during that time they were there all the time?

A. No, going back and forth, Monday and Friday.

By THE COURT:

Q. They were there during the week?

A. During the week.

By MR. HENDERSON:

Q. This is based upon so much a week, or so much a month?

A. Three dollars a week per child.

Q. Then it is based on a week?

A. Yes.

Q. That bill is \$72?

A. Yes.

Q. Now, Mr. Gobitis on this Pottsville Business College, these represent the bills that you have paid to the Pottsville Business College for your daughter Lillian?

A. That's right.

Q. And they carry through to, as a matter of fact, February 14, 1938, right up to date?

A. You can take one out, there are a few missing.

Q. Just listen to my question, please don't argue with me. I assume if there are any other bills, you have them here. This goes up to February 14, 1938.

A. It does. You can take that out.

Q. I am not interested in taking them out.

A. There are some I don't have; they aren't there; I don't have them.

MR. HENDERSON: You are going to offer these in evidence?

MR. MOYLE: Yes. I ask that be marked as Exhibit D.

(A receipt dated February 11, 1938, of Walter Gobitis, \$72, signed by Verna S. Jones, was marked Plaintiffs' Exhibit D.)

DIRECT EXAMINATION (Continued).

By MR. MOYLE:

Q. I present to you Exhibit D, Mr. Gobitis, and ask you if that is a bill for board for Lillian and Walter at the school for 1936 and 1937, is that right?

A. Lillian and William, it says.

MR. MOYLE: We offer that in evidence.

(A copy of Plaintiff's Exhibit D follows:

"February 11, 1938

Received of Walter Gobitis the sum of \$72.00 for board for Lillian and William Gobitis, and for lodging; for three months, January, February and March of 1937.

/s/ Verna S. Jones

WITNESS

/s/ Erma Metzger.")

By MR. MOYLE:

Q. Are these bills of the Pottsville Business College for the school year 1936 and 1937?

A. 1937 and 1938. I don't think they are all here, though. There is December missing, and October missing. That would be \$14 each, that is \$28 more.

Q. I am interested just now in 1936 and 1937. Do you have any other receipted bills covering that year?

A. No.

Q. That is all you have on that?

A. Yes.

Q. Was the tuition covered in the previous?

A. Yes.

By THE COURT:

Q. Mr. Gobitis, I believe you offered the bill here, or identified a bill for board for the 1936-1937 school year. What was it, for January, February and March?

A. Just three months.

Q. What happened during the remainder of the year?

A. Took them back and forth after that.

Q. What was the length of the school year?

A. At that time I think it began on Labor Day in September and ended in May.

By MR. HENDERSON:

Q. Until the end of May?

A. Yes.

Q. And three months of that time they boarded, and the rest of the time you took them back and forth every day in your car?

A. Yes, sir.

By MR. MOYLE:

Q. And that is the same distance as you testified previously, is it?

A. That's right.

* THE COURT: Same school, isn't it?

MR. MOYLE: Same school.

By MR. MOYLE:

Q. And they are all the items you have, then, for this 1936 and '37 year?

A. Yes, sir.

MR. MOYLE: Was there any objection to that bill?

MR. HENDERSON: No, I didn't object to that bill.

THE COURT: What is that?

MR. MOYLE: That is Exhibit D, the Board for these three months.

THE COURT: It will be admitted.

By MR. MOYLE:

Q. Now, coming down to 1937 and 1938, at this time Lillian Gobitis is with the Pottsville Business College, is that right?

A. That's right.

MR. MOYLE: I think we will mark these separately.

(Bill dated September 27, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of \$18.10 was marked Plaintiffs' Exhibit E.)

(Bill dated November 3, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of \$16.60 was marked Plaintiffs' Exhibit F.)

(Bill dated November 22, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of \$12.85 was marked Plaintiffs' Exhibit G.)

(Bill dated January 17, 1938, of Pottsville Business College to Lillian Gobitis in the sum of \$14.20 was marked Plaintiffs' Exhibit H.)

By MR. MOYLE:

Q. I present to you Exhibits E, F, G and H, Mr. Gobitis, and ask you what they are.

A. Just receipts for the months that they represent there, November, September, January, but there are two months missing.

By MR. MCGURL:

Q. What year?

A. 1937, November, September. The school year started September 23d, and it was \$14 a month, and these are some receipts for it.

By THE COURT:

Q. You are paying \$14 a month?

A. Yes.

Q. How long does the term last?

A. About ten months.

Q. Ten months?

MR. MCGURL: Not from September 23d, ten months, it couldn't be.

THE WITNESS: I thought your Honor said how long is it going to last.

By THE COURT:

Q. How long will your daughter be in the Pottsville Business School?

A. Ten months.

Q. When will it terminate?

A. This is a secretarial-stenographer course, we intended to send her ten months.

Q. I see. You are intending to give her ten months in that school?

A. Yes.

THE COURT: Very well.

MR. HENDERSON: Have you offered these bills in evidence?

MR. MOYLE: I will.

MR. HENDERSON: I am going to object to them.

THE COURT: On what ground?

MR. HENDERSON: Upon the ground they sent the daughter to business school, and that there are other schools available in that community. There is no evi-

dence they have tried to send the child to any other school, and I don't think the expense of sending her to this business college is a proper item.

THE COURT: I don't understand that. They were expelled from the public schools.

MR. HENDERSON: Only one, but there are plenty of schools in that adjacent country around there.

THE COURT: They were private schools as to them; in other words, if they were sent to some other school they would have to pay tuition.

MR. HENDERSON: But they wouldn't have to pay this.

THE COURT: Objection overruled, exception for the defendant.

(A copy of Plaintiffs' Exhibit E follows:

"Pottsville, Pa., Sept. 27,
1937

Lillian Gobitas

	To	
	Pottsville Business College	Dr.
4 weeks' Tuition to October 25, 1937		\$14.00
Shorthand Outfit		4.00
Spelling Outfit		1.00
Rapid Calculation Tablet		.50
		<hr/>
	Paid	19.50
	9/27/37	1.40
		<hr/>
		\$ 18.10

Pottsville Bus. College
by F. Taylor")

(A copy of Plaintiffs' Exhibit F follows:

"Pottsville, Pa.,
Nov. 3, 1937.

Lillian Gobitis

To

Pottsville Business College
Dr.

4 weeks' Tuition to Nov. 22, 1937

\$14.00

Accounting Set to Start

4.00

Paid

18.00

11/3/37

1.46

 \$16.60

Pottsville Bus. College
by F. Taylor.")

(A copy of Plaintiffs' Exhibit G follows:

"Pottsville, Pa.
Nov. 22, 1937.

Lillian Gobitis

To

Pottsville Business College Dr.

4 weeks' Tuition to Dec. 20, 1937

\$12.60

10/25—Note Book & Tpw. Paper

.20

11/9—Lead Pencils

.05

 \$12.85

Paid

11/24/37

Pottsville Bus. College
by F. Taylor")

(A copy of Plaintiffs' Exhibit H follows:

"Pottsville, Pa.,
Jan. 17, 1938

Lillian Gobitas
To

Pottsville Business College
Dr.

4 weeks' Tuition to Feb. 14, 1938	\$12.60
Gregg Speed Study	1.50
Typewriter Paper	.10
	<hr/>
	\$14.20

Paid
(Stamped)

JAN 25 1938

POTTSVILLE BUSINESS COLLEGE
By F. Taylor")

By MR. MOYLE:

Q. How far is Pottsville from Minersville?

A. Four miles away.

Q. How does she get there?

A. On a bus back and forth every day.

Q. What does it cost her every day?

A. Ten cents a day.

Q. For how many days?

A. Five days.

Q. Five days a week?

A. Yes, sir.

Q. You have receipted bills covering the expense for William in the Andreas School for 1937 and 1938?

A. No, I do not; I didn't get a receipt for that.

Q. He is still attending there, is he?

A. That's right.

Q. He is there throughout the week?

A. Monday to Friday.

Q. Or do you take him back and forth?

A. Monday and Friday.

Q. What are you paying for board?

A. Three dollars a week.

Q. Have you paid anything for books and such matters?

A. I don't have a receipt from the teacher or from the treasurer for that. I don't think any additional books were taken, that's why they vary.

Q. What are you paying for tuition?

MR. HENDERSON: He has already introduced the bill in evidence.

MR. MOYLE: Oh, is that covered in this? Pardon me.

By THE COURT:

Q. How old is he now?

A. Thirteen now.

By MR. MOYLE:

Q. Did you make an effort to place the children in other public schools?

A. We have.

Q. Were you successful?

A. No.

Q. Do you know what grade William is in?

A. Now he is in eighth.

Q. He is in the eighth grade; Lillian is in the first year in this high school?

A. Business college, yes. I think William is in the seventh grade, though.

By THE COURT:

Q. How far did she go in this school?

A. Eighth, eighth is the last.

Q. Have you made any effort or plans to secure the equivalent of a high school education for these children?

A. I have. I have visited all the surrounding schools around the Borough of Minersville, and all are adamant, they will not admit children who refuse to salute the flag—

Q. Have you investigated any private schools?

A. I have received prices from some; they are higher than the rates we pay just for tuition, and they are so far away they would cost the same thing.

By MR. MOYLE:

Q. What does it cost you a year, then, at this Pottsville Business College?

A. It would cost about \$220 for this first year, because you must buy your books and your equipment with which to operate; \$14 a month for ten months, \$140, and we had to buy equipment, \$80.

Q. Do you think you could get by with \$200 a year following that?

A. I think so.

Q. Is it your intention to send William to the same school?

A. If no public schools accept him, I will have to, even no matter what it costs.

Q. And you have four other children besides William and Lillian?

A. I do.

Q. The other children are not involved here—

MR. HENDERSON: That has nothing to do with this case.

MR. MOYLE: Except under the same stipulation he has to finish the education.

THE COURT: Yes, but I don't think you can bring them in. Objection sustained. I think you are entitled to show, if you can, what it would cost him to provide education for these children until their eighteenth birthday.

MR. MOYLE: For these other children?

THE COURT: No, these two involved. Under the present school laws, as I understand it, they would be required to remain in school until they are eighteen. I don't know whether you have any evidence on that.

By MR. MOYLE:

Q. Lillian is now fourteen years of age?

A. That's right.

Q. So that she is, under the school laws, required to attend the public schools until she is eighteen, so there are four years in which you have to furnish this education?

A. Yes.

Q. Is \$200 a year a reasonable estimate at what you can do that?

A. I think so.

Q. Do you think you can furnish education for that amount?

MR. HENDERSON: He has already answered that.

By MR. MOYLE:

Q. Can you furnish that education to William at \$200 a year?

A. Yes.

Q. And he is now thirteen?

A. Twelve.

MR. HENDERSON: There is something wrong, then.

THE WITNESS: The record, I think, was in error the first time.

MR. HENDERSON: It is written into this testimony as twelve, and this was filed—

MR. MOYLE: The record shows twelve.

THE COURT: You can't make a person older than he is by agreement of counsel.

MR. HENDERSON: Not at all, I want it straight, whichever it is.

THE COURT: Find out.

By THE COURT:

Q. If you can, tell us when was your daughter, Lillian Gobitis, born?

A. I can't tell you. She is here, she can tell. I don't remember.

THE COURT: Can't you find out what the dates of birth of the two children are and stipulate it?

MR. MOYLE: Lillian says she was born November 2, 1923, and William, September 17, 1925.

MR. HENDERSON: Then the girl is fifteen and the boy is thirteen.

THE COURT: At the present moment.

MR. HENDERSON: At the present time.

By THE COURT:

Q. Mr. Gobitis, what I am trying to get at is this, if these children were attending the Minersville School—and I assume they have a high school in Minersville—they would let them go through high school until they were eighteen years of age and get a high school education; in fact, they would be required to under the present rule. Have you made any effort to secure through some private school conveniently located, or at a distance, if necessary, by means of boarding, equivalent, or have you planned to secure equivalent education for them, and if so, have you determined what it would cost?

A. Yes, sir.

Q. Not a mere business course, which is not the equivalent of a whole high school course, although I assume a high school would give the business course.

MR. MCGURL: It may be either, your Honor, the high school—

THE COURT: Yes, but as I understand it, a ten-months' course in a secretarial school is devoted to the studying of typewriting, bookkeeping and things of that kind, and not cultural subjects.

MR. MCGURL: No, but the high school in Minersville and other high schools in Pennsylvania give commercial education.

THE COURT: I understand that, but she wouldn't be getting in business college the cultural subjects she would be getting in high school.

MR. MCGURL: It is my understanding business colleges also give that.

THE COURT: You mean it is the equivalent of a high school? I don't think so; I may be wrong on that.

MR. MCGURL: I wouldn't want to answer that, but I think they do.

By THE COURT:

Q. You have investigated Mr. Gobitis?

A. Yes, I have.

Q. What is she getting there in school?

A. Just getting equipment for a commercial job to work at typewriting in some business.

Q. It doesn't take four years, does it? Ten months, you said?

A. I want to educate her and give her advantages; I have investigated, I have visited the private schools, I have gotten mail from them, and the costs are higher than what we pay at the present place.

By MR. MOYLE:

Q. What are the costs?

MR. HENDERSON: I object to that, if your Honor please.

THE COURT: I think we have gotten enough, unless you have something more definite.

By MR. MOYLE:

Q. What is your plan for William after he finishes the grammar school or grade school?

A. He will continue in the same private school until he graduates from it—

By THE COURT:

Q. What grade does that take him to, eighth grade?

A. Eighth grade. When he finishes eighth, if I can't get a cheap outside school before that time, I will send him to this business college to do the same kind of work.

By MR. MOYLE:

Q. And it is your intention to continue him in school during the time required by the state, that is, until he is eighteen years of age?

A. That's right.

Q. And the same with Lillian?

A. That's right.

MR. MOYLE: Cross-examine.

CROSS-EXAMINATION (Continued).

By MR. HENDERSON:

Q. Mr. Gobitis, have you tried any of the parochial schools around Minersville?

A. I have not.

Q. There are some, are there not?

A. There are.

Q. And there are some parochial high schools?

MR. MOYLE: Just a minute. I would object to that; I don't regard that as competent, and he might have a real sincere objection to a parochial school.

THE COURT: I know, but this is cross-examination; he is certainly entitled to be asked whether he has tried, and if not, why not.

THE WITNESS: I have not, because I had good reasons for it.

By MR. HENDERSON:

Q. The parochial schools, you know, do you not, that the cost of going there is very slight?

A. I think it is very high.

Q. You don't know, do you?

A. I don't.

Q. You have not tried any of the parochial schools in Minersville, itself?

A. I have not.

Q. Or anywhere around there?

A. I have reasons to know they would not accept them.

MR. MCGURL: That is objected to.

MR. HENDERSON: I ask that be stricken from the record, please.

By THE COURT:

Q. You didn't ask them? —

A. I did not.

THE COURT: Motion granted.

By THE COURT:

Q. You had no contact with those in charge of the Roman Catholic schools in your neighborhood?

A. I have not.

MR. HENDERSON: That's all. If your Honor please, at this time I assume that my friends have nothing further to show on the matter of damage, and the jurisdictional question in order to get into this Court, and I move that the bill be dismissed on the ground that they have not shown the jurisdictional amount as required.

THE COURT: I don't know whether they have or not.

MR. HENDERSON: I have computed it, and I find it comes quite far short.

THE COURT: Well, I will overrule the motion for the present.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Yes, exception.

MR. HENDERSON: At this stage?

THE COURT: Yes.

By MR. HENDERSON:

Q. I meant to ask, Mr. Gobitis, you referred to the Fourth Commandment, did you not, instead of the Second?

A. I beg your pardon?

Q. You referred to the Fourth Commandment instead of the Second?

A. The Second.

Q. Well, your bill says the Fourth, and I think if you will look at the 20th Chapter of Exodus you will find it is the Fourth.

A. It might be the 4th verse, but it is only the Second Commandment. * However, I have a Douay version of the Catholic Bible; it is that way there.

WILLIAM HENRY GOBITIS was the next witness on behalf of the plaintiffs, who, after having been duly sworn, was examined and testified that he was twelve years of age, that he was one of Jehovah's Witnesses, and that they are people who have consecrated their time to Jehovah in proclaiming His messages and who obey His commandments.

When asked why he did not salute the flag, he testified:

A. Because it is contrary to God's law.

Q. What law of God do you believe it is contrary to?

A. In Exodus, Chapter 20, verses 4 to 7.

Q. What does that say, if you will, or would you rather find it?

A. I can find it.

MR. MCGURL: Which one is that, now? Is that Douay?

MR. MOYLE: No, that is King James.

MR. HENDERSON: I thought his father would rather have a Catholic Bible. Would you rather have him use King James'?

By MR. MOYLE:

Q. What is the statement in the Bible which you believe prohibits saluting the flag?

A. Here I have it:

"Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me;

And showing mercy unto thousands of them that love me, and keep my commandments."

Q. Have you consecrated yourself to the Lord?

A. Yes.

Q. What do you mean by that?

A. Devoting your time to Him and preaching the gospel.

Q. Do you believe the Bible?

A. Yes.

Q. Do you believe it contains God's law?

A. It is God's law.

Q. And that you should obey His commandments?

A. Yes.

Q. That is why you refuse to salute the flag, is it?

A. Yes.

MR. MOYLE: Cross-examine.

There was no cross-examination. The witness, however, was interrogated by the Court as to his love of country and desire to be a good citizen, and the witness said that he was born in this country, loved the country, wanted to be a good citizen and to do everything he could to be a good citizen of the United States.

LILLIAN GOBITIS next testified on behalf of the plaintiffs. After having been duly sworn, she testified that she was fourteen years of age and that she did not salute the flag in the Minersville School for the following reasons:

A. Because it was contrary to God's law.

Q. What law of God do you believe prohibits you from saluting the flag?

A. Exodus, 20th Chapter, and 5th verse.

Q. It is the same thing?

A. Also 1st John 21, 5: "Little children, keep yourselves from idolatry."

By MR. MOYLE:

Q. Do you believe—

MR. HENDERSON: If your Honor please, I ask that the latter part be stricken from the record; there is nothing in the bill that has anything to do with that.

THE COURT: The motion is refused.

By MR. MOYLE:

Q. Do you believe in being loyal to your country?

A. Yes.

Q. Did you obey the school regulations at Minersville in general?

A. Yes.

Q. That is the only one you had any difficulty with in the school?

A. Yes.

MR. MOYLE: Cross-examine.

There was no cross-examination nor any questions asked by the Court.

The plaintiffs next produced FREDERICK WILLIAM FRANZ, who, having been duly sworn, testified that he was a resident of Brooklyn, New York, where he was engaged in the editorial department of the Watch Tower Bible and Tract Society, to go over the material that is submitted for the publications of the society and to check up as to their accuracy in every respect. Counsel for the defendants thereupon called for an offer of proof.

MR. HENDERSON: If your Honor please, may I ask for an offer of proof in connection with this witness?

MR. MOYLE: May it please the Court, through this witness I hope to prove, or offer to prove that he is one

of Jehovah's Witnesses, that he has been one of Jehovah's Witnesses for many years and is thoroughly acquainted with the principles and teachings of Jehovah's Witnesses, especially concerning the salute to the flag, and concerning consecration to the Lord, and their obligation to obey His law, and such matters. Those matters are alleged in our bill and are denied by the defense.

MR. HENDERSON: If your Honor please, I object to it as immaterial. It is the belief of the Gobitis and not this gentleman.

THE COURT: Yes, they are members of the group; they have expressed their views. I don't know just what your position is, if your view is they don't hold these beliefs, that may be one thing. It may be immaterial. If, however, you concede that the views expressed by the witnesses are the religious beliefs—

MR. HENDERSON: There was some noise; I didn't hear.

THE COURT: I say if the defendants concede that the views which the plaintiffs have expressed on the stand are the religious beliefs that they hold, then I should say this is immaterial.

MR. HENDERSON: If your Honor please, of course, I am not in a position to concede anything in that connection. I think it is their belief, and it is not for me to state what their belief is, that is a question of fact. This has nothing to do with it.

MR. MOYLE: It would be only explanatory, I suppose.

THE COURT: Will you make your offer a little more fully, Mr. Moyle? Just what is it you are proposing to prove?

MR. MOYLE: We expect to show definitely through this witness that the law of God does prohibit a salute

to the flag, that Jehovah's Witnesses as a group of the Christian Church are definitely bound by that law and must obey it; that refusal to so obey it would result in eternal destruction, and that is a belief which Jehovah's Witnesses hold and sincerely maintain. I think we alleged that quite clearly in our bill. It is corroborative of the testimony offered by the complainants.

MR. HENDERSON: If your Honor please, I object to the offer.

THE COURT: It may go to the question of the sincerity of the religious beliefs which these people alleged that they hold. I will permit the testimony.

MR. HENDERSON: And grant me an exception?

THE COURT: Exception.

Subject to the objection of counsel for the defendants, F. W. Franz testified as follows:

By MR. MOYLE:

Q. Are you one of Jehovah's Witnesses?

A. Yes.

Q. How long have you been one of them?

A. Since the year 1913.

Q. You mentioned your work in the Watch Tower Bible and Tract Society office; what is the connection?

A. Jehovah's Witnesses are not incorporated as such, but they use the Watch Tower Bible and Tract Society as their servant, as their agent in carrying on the work and in supervising the work throughout the earth.

Q. Your full time is spent, is it, in this work of Jehovah's Witnesses and this society?

A. Yes, sir.

Q. How long have you devoted your full time to that, how many years?

A. I have been with the Watch Tower Society's office in Brooklyn since the year 1920, June, but more particularly doing this present work since the year 1927.

Q. Are you familiar, then, with the principles and teachings of Jehovah's Witnesses?

A. Yes, sir.

Q. Are you familiar with the Bible teachings?

A. Yes, sir.

Q. Especially concerning the salute to the flag?

A. Yes, sir.

Q. What is the nature of the agreement or covenant which Jehovah's Witnesses as Christians enter into with their Creator?

A. The Apostle Peter—

MR. HENDERSON: Just wait a minute. We object to that, if your Honor please. I don't see how any covenants entered into with Jehovah, except the opinion of the particular witness, are relative, or whatever organizations he belongs to. The fact that someone gets up here and says it isn't proper and according to their Biblical teachings to salute the flag may be their opinion, but I don't think it is testimony in a case.

MR. MOYLE: The allegation is denied by the defendants, sir, and I think it goes to the sincerity of their beliefs.

THE COURT: That doesn't necessarily mean it is relevant; you might make allegations that are immaterial. I am disposed to grant a reasonable latitude here; I am not sure just whether it is material or not. We will permit it.

MR. HENDERSON: Perhaps, if your Honor please, it is better that we go ahead, and then at the end of the testimony I will move to strike it out.

THE COURT: Yes, because there is no jury here.

MR. HENDERSON: Yes, and there is no use to take the time.

THE COURT: Yes.

MR. MOYLE: Read the question, Mr. Stenographer.

(The question was repeated by the Reporter as follows:

“Q. What is the nature of the agreement or covenant which Jehovah’s Witnesses as Christians enter into with their Creator?”)

A. First Peter, 2, verse 21, says that Christ has left us an example, that we should follow his steps. The Scriptures definitely mark the steps that Christ took. Before His birth, it was prophesied He would make an agreement or contract to do the will of His God, Jehovah, and His Father, who is Jehovah.

Psalm 40, verse 8, prophetically says, and puts the words into Christ’s mouth, “Lo, I come to do Thy will, O My God.” We are not left in doubt as to whom those words apply, because the Apostle Paul in Hebrews, the 10th chapter, definitely states that Christ undertook this covenant to do God’s will, and he fulfilled this prophecy.

Hence, the covenant which Jehovah’s Witnesses must make with God, according to the example of Christ, is this agreement to do God’s will as it is written in the Book, the Bible. When Jesus was on trial for His life and appeared before the highest Roman court having jurisdiction in the land in which Jesus preached the Gospel, He said to the Roman Governor, Pontius Pilate:

“To this end was I born, and for this cause came I into the world, that I should bear witness to the truth. Everyone that is of the truth heareth My voice.”

He also stated; “I am not come in My own name, but in My Father’s name.”

• His Father is Jehovah. Hence, Jesus’ own testimony bears witness to the truth that He was a witness for Jehovah, or Jehovah’s Witness, and, hence, an example to all His disciples in this respect. Hence, anyone who covenants to do God’s will, to follow after Christ, must be a witness for Jehovah. Every Christian must be such, and

he must, of course, keep all the commandments of God which relate to the bearing of testimony to the name of Jehovah and to the Government which he has prophesied and prepared to establish on the earth.

By MR. MOYLE:

Q. Now, Mr. Franz, what are the Commandments of God as revealed in His word, the Bible, relative to saluting a flag?

A. The Commandments are stated in numerous places in the Bible. You have a statement of this commandment in the 5th Chapter of Deuteronomy, but the first statement thereof is found in Exodus, Chapter 20, verses 4 and 5, as before referred to in this trial. The statement is that "Thou shalt not make unto Thee——"

MR. HENDERSON: If your Honor please, can't we eliminate it? It has been in two or three times.

THE COURT: Yes, I don't think it is necessary to repeat it again.

By MR. MOYLE:

Q. How do you understand that refers to saluting the flag, this Exodus 20th Chapter, verses 4 and 5?

A. The Commandment says that there shall be no image or any likeness of anything in Creation. A flag is a proper thing in its place. The Bible shows that the Israelites had flags, or standards, or banners. You read the Book of Numbers, Chapter 1, verse 52; Chapter 2, verses 2 and 3, and other verses in the same chapter; Chapter 10, also; all these show that the Israelites had flags. But these were merely markers showing the location of the various tribes to which the members of the Nation of Israel belonged, so that they could locate their position and their relation to the rest of the people of Israel.

However, these flags were not to be saluted, nor any signs or motions or acts of worship be made toward them. So, flags have a definite purpose and use which is legiti-

mate. But when one makes them a symbol or an emblem toward which one renders any cult or worship, adoration or service, then he definitely makes this an image or a likeness and his course of conduct thereto comes within the purview of this commandment and is a violation of the commandment.

The flag of any country, in particular, is a symbol. It is an emblem of certain principles toward which the country adheres. It is also a symbol of the Government. The American flag, from an account as presented in the *Encyclopedia Americana*, shows that every feature thereof has a significance, the number of stripes, the stars, the blue field, the colors, all have a symbolic meaning. The flag also represents the Government.

Now, it might be objected that saluting a flag does not violate this commandment because it is not bowing down to the flag, but bowing down to the flag is merely expressive of the Creator's feeling, or attitude, or belief with respect to the flag, and this expression, "Bow down to and serve," as stated in the commandment, covers all attitudes, postures, motions, acts which an individual may make toward the flag which makes the flag an idol or a thing of worship and of adoration.

For instance, the Bible not only speaks of bowing down to a symbol or a likeness of something in Creation, but to quote First Kings, Chapter 19, verse 18, the Lord God there shows that the Israelites might kiss an image, or they might wave or throw a kiss with a hand to an image. This was a violation of the commandment.

This same kissing, or throwing a kiss to an image, or to an object of nature as the sun, moon or stars, is also stated in Job, Chapter 31, verses 25, 26 and 27; also Hosea, Chapter 13, verse 2. The statement is, "Let the men that sacrifice kiss the calves," the calf idol, which was worshiped in those days.

We know that a kiss or throwing a kiss with the hand is a salutation, or a form of salutation. This is definitely

forbidden by the law of God with respect to any image or likeness, and, hence, is a violation of the spirit and purport of the Second Commandment.

Q. Now, Mr. Franz, what would be the penalty, if any, to a Christian, or one of Jehovah's Witnesses, who disobey such commandments?

A. Eternal annihilation, destruction. In Deuteronomy the 18th Chapter, verses 15, 18 and 19, Jehovah God states, through the Prophet Moses, that He would raise up His great Prophet or Spokesman, Christ Jesus, and that it should come to pass that every soul which would not hear the words which this Prophet spoke in Jehovah's name, God would require it of him.

The Apostle Paul in Acts, Chapter 3, verses 22 and 23, quotes this promise of God, and he says, "It shall come to pass, that every soul, which will not hear that Prophet shall be destroyed from among the people."

MR. MOYLE: Cross-examine.

There was no cross-examination, but counsel for the defendants moved to strike out the testimony of F. W. Franz, which motion was overruled by the Court, as follows:

MR. HENDERSON: If your Honor please, I now wish to renew my motion to strike out the testimony of this witness as immaterial in connection with this case. It is based, of course, upon opinion, and it has no particular bearing, so far as I can see it, in the case. The plaintiffs are the Gobitis'; if there is any religious belief that is involved, it is their religious belief. They belong to Jehovah's Witnesses; we do not know that they believe any of these things that this gentleman is speaking about. We only know what they testified to on the stand, themselves.

THE COURT: Of course, this Court is not concerned with the validity of the religious beliefs held by these persons; it is only concerned, if at all, with the sin-

cerity of them, and whether they are held by the individuals as religious beliefs. It seems to me this testimony may have some bearing on that question; therefore, I will overrule your motion and grant you an exception.

The plaintiffs then rested.

DEFENDANTS' EVIDENCE.

○ The defendants produced only one witness, CHARLES EDWARD ROUDABUSH, who, after having been duly sworn, testified that he has been superintendent of schools in Minersville for the past twenty-three years. When his attention was called to the provision in the School Code set forth in 24 Purdon's Statutes, Section 1551, wherein schools in Pennsylvania are required to teach "civics, including loyalty to the State and National Government," and was asked what part the salute to the flag plays in that teaching, the witness testified concerning the same and also demonstrated the salute as used in the school in which the Gobitis children had been pupils.

A. We feel that every citizen and every child in the public schools should have the proper regard for the emblem of the country, the flag. We have never required the salute of the flag, yet everyone in our school system for twenty-three years, and even longer, has given the salute voluntarily, willingly. The salute of the flag, we believe, is a means of helping to inculcate in the children a love for country, the institutions of the country, and for that reason we have expected the salute from the teachers and the children.

Q. Doctor, would you kindly explain to us just exactly what you do in connection with this salute? It has been admitted, practically, in the pleadings, but it might be amplified just a little, if you please.

A. In some of the schools—

Q. Just this school in which were the Gobitis children, exactly what occurred?

A. Sometimes I believe in our school where these children were enrolled they sing the salute, they rise and sing, "I pledge allegiance to my flag and the Republic for which it stands, one nation indivisible, with liberty and justice for all."

Q. Doctor, exactly what is the nature of the salute? Would you mind demonstrating it to us?

A. Standing—

Q. Right hand over the chest?

A. Yes. "I pledge allegiance to my flag—"

Thereafter, the witness testified as follows regarding the effect of the failure or refusal of pupils to salute the flag, the arrangements which were made for those who refused to salute for alleged religious reasons, and the nature and character of the ceremony or exercise.

Q. When you say, "my flag," extending your right hand towards the flag with the palm upraised. Doctor, in your opinion, what is the effect when a few children do not salute the flag and others do, so far as your school system is concerned?

A. It would be demoralizing on the whole group.

Q. Why?

A. The tendency would be to spread. In our mixed population where we have foreigners of every variety, it would be no time until they would form a dislike, a disregard for our flag and country. May I say that the thing that goes hard with us when someone refuses to salute the flag is to refuse to pledge allegiance to the country for which it stands.

Now, I believe when we make a citizen out of an alien the first thing that we require is they have to denounce their allegiance to the foreign country, and it would be reasonable to suppose that they would be required to pledge allegiance to the country in which they want to become citizens.

By THE COURT:

Q. Just a minute. Is there any arrangement, Doctor, for any children who explain that they refuse to salute the

flag because of religious reasons, to pledge their allegiance separate from the salute?

A. No, we have never made any provisions; we feel it is not a religious exercise in any way and has nothing to do with anybody's religion.

Q. Do you feel that these views to the contrary here held by these two pupils are not sincerely held?

A. I feel that they were indoctrinated.

Q. Do you feel their parents' views were not sincerely held?

A. I believe they are probably sincerely held, but misled; they are perverted views.

Q. I suppose you would say the same thing about a Mohammedan, wouldn't you, or a Hindu?

A. No, that is a whole——

Q. In other words, anyone who didn't agree with your religious views and mine would be indoctrinated, or hold perverted views, because he doesn't believe with you?

A. As I see it, your Honor, I feel that this is not a matter of religion at all, it has nothing to do with religion, and I think the objection taken by the Jehovah's Witnesses is uncalled for.

By MR. HENDERSON:

Q. Well, that is something you don't have to get into now, Doctor Roudabush. In the matter of teaching civics and loyalty, do you or do you not have any opinion or feeling with reference to the fact that a sufficient number of students fail to salute the flag, whether or not in time that will lead to any breakdown of government from the standpoint of the safety of the public?

A. I do, I feel so.

Q. Why, Doctor?

A. Take the matter of loyalty to country. If our citizens do not have loyalty to the country——

THE COURT: You were asked about the salute to the flag.

THE WITNESS: I am coming to that.

MR. HENDERSON: He is coming around to that, where the salute plays its part, I am sure, your Honor.

THE WITNESS: In order to establish this loyalty to country, and things of that nature, I think the salute to the flag does contribute a large part.

By THE COURT:

Q. Is it your daily experience or not that this daily exercise repeated every day tends to become somewhat of a formalistic matter, a matter of form with a lot of children?

A. I believe it does, just the same as going to church, or anything else, I think it would be just the same, some people would regard it that way. But there comes a time when there will be a thinking back to the lessons that were inculcated in the public schools.

By MR. HENDERSON:

Q. Doctor, of course, the flag of the United States is a symbol thereof. Do you or do you not feel that disrespect to the flag is disrespect to the Government, to its institutions and ideals?

A. I do feel it is.

Q. Of course, those who reside within the Commonwealth receive the protection and benefits afforded to them, and, naturally, must obey its laws, and should show due respect to the Government, its institutions and ideals. your opinion, is the failure to salute the flag any disrespect?

A. I think it is; yes, sir.

Q. And, following that, is it——

By THE COURT:

Q. Would you say that if the declination to salute the flag was based on sincere religious grounds that that is disrespect?

A. I can't admit——

Q. Without admitting it, admitting that a misguided person sincerely feels he must weaken his whole religious

conscience to do it, would you say that is disrespect to our flag?

A. I would. I feel he should be put right. They should show the proper reverence of the country and the flag.

Q. Do I understand you to mean the public schools should see their religious beliefs are changed?

A. Try to correct the thing that exists and that is wrong.

By MR. HENDERSON:

Q. Doctor, is or is not your opinion that a proper salute of the flag of your country is just part of a patriotic ceremony, an act of respect to the institutions and ideals of the land, and affording a safe place to live in?

A. That is my opinion.

Q. In other words, I gathered from what you stated you did not consider that a religious right is involved at all; that is your opinion?

A. That is my opinion, sir.

By THE COURT:

Q. What you mean, I suppose, is that it has no religious significance to you; in your mind, it has no religious significance; isn't that really what you mean?

A. Yes.

Q. You are not prepared to get into someone else's mind and to say what is in their mind with respect to it?

A. No.

In concluding this testimony, Dr. Roudabush testified regarding the number and qualifications of parochial schools in the vicinity of Minersville and as to the requirements for non-catholic pupils attending the same.

By MR. HENDERSON:

Q. Doctor, are you familiar with the parochial schools around Minersville?

A. I am; yes, sir.

Q. And there are parochial schools there?

A. We have four parochial schools in Minersville furnishing grade education up to and including the eighth grade and in Pottsville four miles away, we have a parochial high school that is equivalent to any in the country.

Q. Doctor, do you know of your own knowledge that they take Protestants in those schools?

A. They do.

MR. MOYLE: May it please the Court, this is all objected to as immaterial and irrelevant.

THE COURT: Objection overruled.

By MR. HENDERSON:

Q. Doctor, are you familiar at all with the expenses of going to those schools?

A. I am not—I couldn't give you the exact figures, but I know that many of them go by just mere subscription, wherever they are able to pay. Many go for nothing.

Q. It is a fact, is it not, that the parochial schools certainly do take in Protestants?

A. Yes.

Q. We all understand that?

A. Yes.

Q. Mr. Gobitis stated he never appealed to any of these parochial schools—

By THE COURT:

Q. Do they have a compulsory flag salute ceremony?

A. Indeed, I am not able to say.

Q. You don't know?

A. I don't know.

MR. HENDERSON: Cross-examine.

Dr. Roudabush then submitted to the following cross-examination.

CROSS-EXAMINATION.

By MR. MOYLE:

Q. You believe, Doctor, in the principles of religious freedom as set forth in the Pennsylvania Constitution?

A. I do, sir.

Q. Do you believe in the statement in that constitution, Section 3, Article 1, that no human authority can in any case control or interfere with the rights of conscience?

A. I do.

Q. Doesn't your regulation flag salute as applied to these two children interfere with their rights and their consciences?

A. They say so.

Q. I am asking you.

A. I don't know, I couldn't answer the question.

Q. You wouldn't say whether it does or does not?

A. No.

Q. If they sincerely believe—

THE COURT: Perhaps it is a legal question as to what those rights are.

MR. MCGURL: That is it, exactly.

THE COURT: I think it is a question of law.

MR. MCGURL: That is where this case will get to, I think, your Honor, that very question.

By MR. MOYLE:

Q. You have set forth in the answer filed by you, Doctor, that the act of saluting the national flag is a necessary and reasonable method of teaching loyalty to the state, and so on. You believe that, do you?

A. Yes, sir.

Q. And it is absolutely necessary to salute the flag in order to teach loyalty?

A. Oh, no, one of the means, it is one of the means of teaching loyalty.

Q. Then you admit that loyalty could be taught—

A. It is taught otherwise.

Q. —without saluting the flag?

MR. MCGURL: We object to that, if your Honor please, because the manner of teaching loyalty, or any

other subject, is within the jurisdiction of the school authorities, and whatever anybody's opinion of teaching it in some other manner might be is another matter.

THE COURT: I understand Mr. Moyle to say it is necessary; is there such an averment?

MR. MOYLE: Yes, that is on page 10 of the answer.

THE COURT: Yes, you do say "necessary."

MR. MCGURL: And reasonable, we say.

By THE COURT:

Q. I would imagine, Doctor, that what you really mean, in your opinion, it is an appropriate method?

A. Yes.

Q. But not a necessary method, there are other methods?

A. There are other methods.

Q. You say it is an appropriate method, and you have adopted it?

A. Yes, sir.

By MR. MOYLE:

Q. Then you admit loyalty could be taught without the flag salute, is that right?

A. Yes, sir. I will not admit, though, that we do not have the right to ask—

Q. I understand.

THE COURT: That is a legal question.

MR. HENDERSON: That is the whole point; you required it, and that is the case.

By MR. MOYLE:

Q. Outside of the flag salute issue, there are no other acts of disobedience on the part of these children?

A. None at all, very good children.

Q. You do state that the public welfare and safety involving the citizens would be harmed by reason of the fact

that some of the pupils refuse to salute the flag, even on conscientious grounds, is that right?

A. Yes, sir.

Q. Isn't it a fact, Doctor, that there would be harm to the public welfare and safety by applying that regulation to one who conscientiously objects to it?

A. I cannot admit a conscientious objection.

Q. Just for the sake of argument, you would admit it would be possible, wouldn't you?

A. No, I think there should not be any conscientious objection.

Q. But if there were, Doctor, if one should conscientiously object and he was forced to stifle his conscience and commit this act which he believes morally wrong, wouldn't that be detrimental to the public welfare and safety?

A. May I ask a question?

Q. No, I would like to have you answer my question.

A. As I see it, there is no justification for the objection; therefore, I can't answer your question.

MR. MOYLE: I ask that answer be stricken out, it is not responsive. I would like to have an answer.

THE COURT: He says he cannot answer the question.

MR. MOYLE: All right, that's all.

PLAINTIFFS' EVIDENCE IN REBUTTAL.

In rebuttal, the plaintiffs produced Charles R. Hessler who was sworn, but, after objection based on plaintiffs' offer of proof, the witness was withdrawn without testifying.

Erma Metzger was then called by the plaintiffs and duly sworn, but she too was withdrawn without testifying after objection had been raised based on plaintiffs' offer of proof.

DEFENDANTS' EVIDENCE IN SURREBUTTAL.

In surrebuttal, the defendants recalled Dr. Charles Edward Roudabush, who testified regarding the school books used in the public schools of Minersville. Defendants' evidence in surrebuttal is as follows:

MR. HENDERSON: We have some of the public school books here, and I want to see if any of them play any part. It might be helpful.

There are about three paragraphs in the books that were used at the time in this school, and these books, I understand, are used generally throughout the United States, and I would like to put on the record about three paragraphs.

THE COURT: Put everything on the record that may be material.

MR. HENDERSON: I think this might be helpful to show what the youngsters are taught.

MR. MOYLE: I don't see how that would be helpful at all. They may be taught it in the school where they are now, for all I know. The only issue is the salute to the flag.

MR. HENDERSON: In Civics it shows specifically that every citizen should know how and when to salute the

American Flag, and when to give the pledge. That is what they teach them in Civics. "The Stars and Stripes Forever" are at the top of a page in "Behave Yourself," one of the books they have in the public schools.

THE COURT: You may put on the record what you wish.

MR. HENDERSON: I just want to read, your Honor, from the books. I can put Doctor Roudabush on the stand so this can be part of his testimony, and we will assume he is there, and these books are the ones used in the school.

DOCTOR ROUDABUSH: I will certify to that. Two of them are in the grades the children were in when they left school.

CHARLES EDWARD ROUDABUSH, recalled.

DIRECT EXAMINATION.

By MR. HENDERSON:

Q. As far as "Behave Yourself" is concerned, it was a book in use at that time?

A. Yes, sir.

Q. And they were taught as follows, on page 149, at the top of which are "The Stars and Stripes Forever," being a picture of the American Flag with a young man with his hat off in his right hand and pressing it against his heart:

"Respect and reverence for the American Flag are expected from every decent citizen. It is the symbol of the masses, and any disrespect is a reflection upon the society in which you live. The artificial rules of etiquette that have grown up, and have come to be recognized as the basis for proper recognition of it, all have their foundation in the fact that it is a symbol, that it represents something. It isn't a piece of cloth; it is the Pilgrims at Plymouth Rock, the signers of the Declaration of Independence, the fighters on the frontier, the sol-

diers, sailors, statesmen, the rich and poor; all who have made the United States. And it is not the past alone, or the present. It is the future, whatever the future is to be. The Flag stands for all that we have been, all that we are, all that we are to be."

This book was written by Allen and Briggs. It is the property of the Minersville Public Schools at Minersville.

THE COURT: That really is supporting the plaintiffs' case.

MR. HENDERSON: We have no objection whatever it does.

THE COURT: I mean it is an acknowledgment the Flag is a symbol which they are asked to worship.

MR. HENDERSON: In "Civics Through Problems," by Edmonson, Dordinea, and Little, which is the property of the Minersville School District, reading from page 37, it says:

"In the pledge to the Flag our duty as citizens is defined. In this pledge we swear allegiance to our country. The duties of allegiance requires that the citizen be willing to defend his country in time of war and try to promote its interests at all times. In turn our country is obliged to defend the life, liberty, and property of a citizen at home and abroad. Every citizen should know how and when to salute the American Flag and be able to give the pledge. The pledge was originally written by Francis Bellamy. The first form of the pledge was changed and it is now given in the following way:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all."

THE COURT: Very well.

MR. HENDERSON: On page 351 of "Easy Road to Reading," in the 6th Grade, which is used in the Public

Schools of Mineville, by Lyons and Carnahan, we read the following:

"The Law of Loyalty.

The good American is loyal.

If our America is to become ever greater and better, her citizens must be loyal, devotedly faithful, in every relation in life."

And the second one:

"I will be loyal to my school. In loyalty I will obey and help other pupils to obey those rules which further the good of all."

Those are part of the teachings in the particular school to which they have been going.

If your Honor please, I do not know just how you want this record. We would be very glad to furnish your Honor with a request for findings of fact and findings of law, if that is the way in which you would like it.

THE COURT: I think that is the way to do it. I think you will want the testimony transcribed, which will be done shortly, and within a certain period after that I would say counsel for the plaintiffs should have his requests and his brief ready, let us say within fifteen days after the testimony is transcribed, and serve copies on you, and then within fifteen days thereafter you prepare and file yours.

MR. HENDERSON: Yes, sir.

THE COURT: And the plaintiffs have leave after that to file a reply brief, if they wish to do so.

MR. HENDERSON: If your Honor please, at this time I would like to renew my motion to dismiss on the jurisdictional grounds which are set forth at the beginning of the trial and which are set forth in the five different motions the stenographer will copy, plus the amount is not sufficient that is involved.

THE COURT: I will take that under consideration.

MR. MOYLE: The understanding, then, is the plaintiffs will file requests for findings and a brief fifteen days after the testimony is available?

THE COURT: And serve a copy on Mr. Henderson and Mr. Henderson will prepare his requests and brief and serve a copy on you, and you will advise the Court if you want to file a reply brief. I think you ought to get that in five days. You will have fifteen days, fifteen days, and five days.

MR. HENDERSON: That is satisfactory to us.

It was further agreed by counsel that wherever the name of Dr. A. E. Valibus appears to have been misspelled in the answer of the defendants, it will be deemed to have been correctly spelled.

At the suggestion of the Court, a suggestion was subsequently filed by the attorneys for the defendants that George H. Beatty, one of the defendants, died on January 30, 19

We agree that the foregoing contains a true, complete and properly prepared statement under Equity Rule 75 of the evidence adduced at the hearing of the above-numbered and entitled cause.

H. M. McCAUGHEY,

Attorney for Plaintiff

JOHN B. MCGURL,

RAWLE & HENDERSON,

By JOSEPH W. HENDERSON

Attorneys for Defendant

**REQUEST FOR FINDINGS OF FACT AND
CONCLUSIONS OF LAW.**

(Filed June 18, 1938.)

The issues in this action having come on for trial before the Court on the fifteenth day of February, 1938, the complainants request that the Court enter the following as findings of fact and conclusion of law established in said matter.

FINDINGS OF FACT.

1. That the plaintiff Walter Gobitis is a citizen of the United States of America and of the Commonwealth of Pennsylvania, and is a resident of the Borough of Minersville in said Commonwealth of Pennsylvania.

Affirmed. M.

2. That plaintiffs Lillian Gobitis, age thirteen years, and William Gobitis, age twelve years, are children of the said Walter Gobitis and are residents of the Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years.

Affirmed. M.

3. That the Minersville School District is a public school district embracing the Borough of Minersville, Schuylkill County, Pennsylvania; that the defendants Dr. A. E. Valebus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, William Zapf and David I. Jones were at the time of the institution of this action the duly elected, qualified and acting Board of Education of such school district, and constitute a body politic and corporate in law, and have the management and control of the Minersville public schools; that David I. Jones is no longer a member of said Board of Education and has been succeeded by Dr. E. W. Keith subsequent to the filing of complainants' bill in equity; that the defendant Charles E.

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Roudabush is the superintendent of the Minersville public schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

Affirmed. M.

4. That the aforesaid Minersville public schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

Affirmed. M.

5. That heretofore, to wit, on the sixth day of November, A. D. 1935, at a regular meeting of the said Board of Education of the Minersville public schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

• "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

Affirmed. M.

6. That the minor plaintiffs Lillian Gobitis and William Gobitis were placed in the Minersville public school by their father Walter Gobitis at the beginning of the scholastic year 1935-1936 and attended said school until the sixth day of November, 1935.

Affirmed. M.

7. That plaintiffs are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement or covenant with Jehovah

God, wherein they have consecrated themselves to do His will and to obey His commandments; they accept the Bible as the Word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Plaintiffs and all of Jehovah's Witnesses sincerely and honestly believe that the act of saluting a flag contravenes the law of Almighty God in this, to wit:

- (a). To salute a flag would be a violation of the Divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, which reads as follows, to wit:

“Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them . . . ”,

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

- (b) To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes are of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of Almighty God, and contravenes His express command as set forth in Holy Writ.

Affirmed as to plaintiffs. M.

8. Plaintiff Walter Gobitis has at all times endeavored to instruct and inform his said children in the truths set forth in God's Word, the Bible, desiring to educate them

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and bring them up as devout and sincere Christian men and women, all as it was his right, privilege and duty so to do; that said children have been so instructed from an early age and are now and have been at all times material hereto sincere believers in the Bible teachings and have faithfully endeavored to obey the commandments of Almighty God as set forth therein.

Affirmed. M.

9. Plaintiffs are American citizens and honor and respect their country and state, and willingly obey its laws, but that they nevertheless believe that their first and highest duty is to their God and His commandments and laws, and that true Christians have no alternative except to obey the Divine commandments and to follow their Christian convictions.

Affirmed. M.

10. That the said Lillian Gobitis and William Gobitis did not and were conscientiously unable to salute the flag because their religious beliefs and manner of worship forbade such salute, and the giving of such salute was in contravention of and in conflict with the commands of Almighty God, as they sincerely believed.

Affirmed. M.

11. That at the meeting of the Board of Education of the Minersville public schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in foregoing paragraph "5." hereof, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, publicly announced, "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Waslewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

Affirmed. M.

12. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to.

Affirmed. M.

13. That since the sixth day of November, A. D. 1935, the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and have not attended their respective classes in the aforesaid Minersville public schools.

Affirmed. M.

14. That the value of the right for which plaintiffs seek protection, to wit, the right of the minor plaintiffs to obtain an education in the public schools of the Commonwealth of Pennsylvania and in the schools maintained by the Minersville School District is a valuable personal and property right to said plaintiffs, and the denial to them of such right is causing them damage in excess of the sum or value of three thousand (\$3000) dollars, exclusive of interest and costs.

Affirmed as to plaintiff Walter Gobitis only. M.

CONCLUSIONS OF LAW.

1. That this Court has jurisdiction of said cause, because it is a suit of a civil nature in equity wherein the controversy exceeds, exclusive of interest and costs, the sum or value of three thousand (\$3000) dollars, and arises under the Fourteenth Amendment to the Constitution of the United States.

Affirmed. M.

2. That the regulation of the Board of Education of the Minersville public schools entered on the sixth day of November, 1935, and hereinbefore referred to, is unconsti-

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tutional, null and void, as applied to the plaintiffs Lillian Gobitis and William Gobitis, under the due process clause of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to wit:

- (a) It unreasonably restricts the freedom of religious belief and worship and the free exercise thereof, of said plaintiffs.
- (b) It unreasonably restricts the freedom of speech of said children by subjecting them to the penalties of dismissal from school and of juvenile delinquency, solely because they are conscientiously unwilling and unable to salute the flag.
- (c) It discriminates against children in the public schools by requiring them to salute the flag whereas it does not make such a requirement of the rest of the population, and thereby denies the said Lillian Gobitis and William Gobitis the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Constitution of the United States.

Refused as drawn. M.

3. That the aforesaid regulation is unconstitutional, null and void as applied to the plaintiff Walter Gobitis under the due process clause of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to wit:

- (a) It unreasonably restricts the liberty of Walter Gobitis in his choice and direction that his said children be educated at free public schools.
- (b) It unreasonably restricts the liberty of said Walter Gobitis by subjecting him to penalties of prosecution and punishment under the compulsory school attendance laws of the Commonwealth of Pennsylvania, not for his own conduct, but for the conduct of his children in failing to salute the flag.

(c) It unreasonably restricts the liberty of said Walter Gobitis freely to impart to his said children Bible teachings and a manner of worship according to the dictates of his own conscience.

(d) It denies the said Walter Gobitis of the property right to have his children, the said Lillian Gobitis and William Gobitis, educated in the free public schools of the City of Minersville, without charge.

Refused as drawn. M.

4. That the acts and conduct of defendants in excluding the minor plaintiffs from the public schools of Minersville cannot be justified under the police power of the state in that the failure and refusal of said minor plaintiffs to salute the national flag in accordance with the provisions of said regulation could not and did not in any way prejudice or imperil the public safety, health or morals or the property or the personal rights of their fellow citizens.

Affirmed. M.

5. That the plaintiffs have no adequate remedy at law to prevent the injury and damage as aforesaid.

Affirmed. M.

6. That the plaintiffs are entitled to judgment for the relief demanded in the bill in equity.

Affirmed. M.

I THEREFORE DIRECT that judgment be entered as follows, to wit:

1. That the regulation of the Board of Education of the Minersville public schools set out in paragraph "5." of page 2 hereof, as applied to the plaintiffs, be decreed to be null and void as violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

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2. That the said defendants, and each of them, and all persons acting under their authority and direction be enjoined and restrained from doing the following acts:

- (a) From continuing in force the expulsion order expelling said minor plaintiffs from school and prohibiting their attendance at said schools.
- (b) From requiring and ordering said minor plaintiffs to salute the flag during the course of the patriotic exercises conducted at said schools, or at any other time while in attendance at said schools.
- (c) From in anywise hindering or molesting or interfering with the right of said minor plaintiffs to enjoy full religious freedom in the manner dictated by conscience of their own.

Let judgment be entered accordingly.

Dated April , 1938.

.....
Judge.

**DEFENDANTS' REQUESTS FOR FINDINGS OF FACT
AND CONCLUSIONS OF LAW.**

(Filed April 5, 1938.)

The learned trial Judge in the above-entitled case is respectfully requested by the defendants to make the following findings of fact and conclusions of law:

FINDINGS OF FACT.

1. The plaintiff Walter Gobitis is a citizen of the United States of America and of the Commonwealth of Pennsylvania, and is a resident of the Borough of Minersville in said Commonwealth of Pennsylvania.

Affirmed. M.

2. The plaintiff Lillian Gobitis was born November 2, 1923, and the plaintiff William Gobitis was born September 17, 1925. Each of said plaintiffs are children of the afore-said Walter Gobitis, citizens of the United States of America, and of the Commonwealth of Pennsylvania, and are residents of the Minersville School District of Minersville and have resided there continuously for many years.

Affirmed. M.

3. The Minersville School District is a public school district embracing the Borough of Minersville, Schuylkill County, Pennsylvania; that the defendants Dr. A. E. Valebus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, William Zapf and David I. Jones were at the time of the institution of this action the duly elected, qualified and acting Board of Education of such school district, and constitute a body politic and corporate in law, and have the management and control of the Minersville public schools; David I. Jones is no longer a member of said Board of Education and has been succeeded by Dr. E. W. Keith subsequent to the filing of complainants' bill in equity; George H. Beatty is no longer a member of said

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Board of Education, having died testate on January 30, 1938; the defendant Charles E. Roudabush is the superintendent of the Minersville public schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants now living are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

Affirmed. M.

4. The aforesaid Minersville public schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

Affirmed. M.

5. On the sixth day of November, A. D. 1935, at a regular meeting of said Board of Education of the Minersville public schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

Affirmed. M.

6. Said regulation provided the reasonable method of teaching "civics, including loyalty to the State and Federal Government" and its adoption was within the authority of the defendant Board of Education.

Refused as drawn. M.

7. Subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville public schools at the opening of school to rise, place their right hands on their respective

breasts and to speak the following words: "I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all." The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag.

Affirmed. M.

8. The minor plaintiffs Lillian Gobitis and William Gobitis were placed in the Minersville public school by their father Walter Gobitis at the beginning of the scholastic year 1935-1936 and attended said school until the sixth day of November, 1935.

Affirmed. M.

9. The plaintiffs are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; each of the plaintiffs as a member of said group has covenanted with Jehovah God to obey the commandments of God and to preach the gospel of the kingdom as contained in the Bible; the Bible constitutes the creed of each of the plaintiffs.

Affirmed. M.

10. The act of saluting the national flag is not a violation of any of the commandments of God as set forth in the Bible; it is not an act of idolatry or worship of an image in place of God, and has no reference to nor does it affect or concern one's religious beliefs or one's manner of religious worship.

Refused as drawn. M.

11. The act of saluting the national flag is no more than an acknowledgment of the temporal sovereignty of our country and has nothing to do with religion. It is not a religious rite but merely a part of a patriotic ceremony.

Refused as drawn. M.

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12. The act of saluting the national flag does not go beyond that which is reasonably due any government.

Refused as drawn. M.

13. The act of saluting the national flag is merely an awakening in the minds of youth of a civic consciousness and of loyalty to government.

Refused as drawn. M.

14. Lillian Gobitis and William Gobitis failed to salute the national flag at daily exercise of Minersville public school.

Affirmed. M.

15. At the meeting of the Board of Education of the Minersville public schools held on November 6, 1935, as aforesaid, and immediately after the passage of said regulation the defendant Charles E. Rondabush, acting under the direction and authority of said Board of Education aforesaid, publicly announced, "I hereby expel from the Minersville schools Lillian Gobitis, William Gobitis and Edmund Waslewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

Affirmed. M.

16. Since November 6, 1935, Lillian Gobitis and William Gobitis have not attended their respective classes in the aforesaid Minersville public school.

Affirmed. M.

17. From the last week of December, 1935, to the end of May, 1937 (except for holidays and vacation periods), Lillian Gobitis attended classes in Jones Kingdom School at Andreas, Pennsylvania.

Affirmed. M.

18. From September, 1937, to the date of hearing, to wit, February 15, 1938 (except for holidays and vacations),

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Lillian Gobitis attended classes in Pottsville Business College.

Affirmed. M.

19. From the last week of December, 1935, to the day of hearing, to wit, February 15, 1938 (except for holidays and vacations), William Gobitis has attended class in the Jones Kingdom School at Andreas, Pennsylvania, being now in the seventh grade.

Affirmed. M.

20. The Jones Kingdom School at Andreas, Pennsylvania, does not provide education beyond the eighth grade.

Affirmed. M.

21. Neither Walter Gobitis nor his children Lillian Gobitis or William Gobitis have made any attempt to be admitted to classes at any of the four parochial grade schools in Minersville or the parochial high school in Pottsville, Pennsylvania, which is only four miles distant from Minersville.

Affirmed. M.

22. The parochial schools in Minersville and vicinity permit persons of other religious beliefs to attend their institution, many of such persons attending by mere subscription of whatever they are able to pay and many of such persons attending at no cost whatsoever.

Refused. M.

23. Walter Gobitis has not already expended and in all probability will not expend until Lillian Gobitis attains the age of eighteen years the sum of \$3000 on account of educating said Lillian Gobitis since her expulsion from the Minersville public schools.

Affirmed. M.

24. Walter Gobitis has not already expended and in all probability will not expend until William Gobitis attains the

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age of eighteen years the sum of \$3000 on account of educating said William Gobitis since his expulsion from the Minersville public schools.

Affirmed. M.

25. Walter Gobitis has not already expended and in all probability will not expend until William Gobitis and Lillian Gobitis respectively attain the age of eighteen years the sum of \$3000 on account of educating the said William Gobitis and Lillian Gobitis since their expulsion from the Minersville public schools.

Refused. M.

26. The amount in controversy does not exceed the sum of \$3000 exclusive of interest and costs.

27. The failure or refusal of Lillian Gobitis and of William Gobitis or of any pupil or group of pupils to salute the national flag was and would be disrespectful to the government of which the flag is a symbol and tends and will tend to promote disrespect for that government and its laws with the result that the public welfare and safety and well-being of the citizens of the United States will be ultimately harmed and seriously affected thereby.

Refused. M.

CONCLUSIONS OF LAW.

1. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not exceed the sum or value of \$3000, exclusive of interest and cost.

Refused. M.

2. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not arise under the Constitution or laws of the United States.

Refused. M.

3. This Court has no jurisdiction of this suit under subsection 14 of section 24 under the Judicial Code (28 U. S. C.A. sec. 41 (1)) because the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States or of any right secured by any law of the United States.

Affirmed. M.

4. The plaintiffs have failed to establish cause of action entitling them to the relief sought in their bill of complaint.

Refused. M.

5. The Board of Education of Minersville School District had the authority to adopt reasonable regulations regarding the conduct and studies of pupils in its school district and to expel pupils, such as the minor plaintiffs, for refusal to obey such regulations.

Affirmed. M.

6. The resolution requiring pupils to salute the national flag as a part of the daily exercises of the school is reasonable.

Refused as drawn. M.

7. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the United States.

Affirmed. M.

8. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the Commonwealth of Pennsylvania.

Refused. M.

9. The attendance at public schools in the Commonwealth of Pennsylvania is a privilege or advantage which is to be enjoyed by its citizens subject to reasonable conditions and restrictions imposed by the legislature through the

local boards of education, and in this case through the Board of Education of Minersville School District. It is not a right entitling the plaintiffs to the relief sought in their bill of complaint.

Refused. M.

10. Plaintiffs' bill of complaint should be dismissed with reasonable costs and charges to be borne by plaintiffs.

Refused. M.

Respectfully submitted,

JOHN B. MCGURL,
RAWLE & HENDERSON,
JOSEPH W. HENDERSON,
GEORGE M. BRODHEAD, JR.,
Attorneys for Defendants.

OPINION

Sur Pleadings and Proofs.

(Filed June 18, 1938.)

June 18, 1938.

MARIS, J.

This suit in equity was brought to enjoin the individual defendants from continuing to prohibit the attendance of the minor plaintiffs at the Minersville Public Schools because of their refusal to salute the national flag as required by the defendants. From the evidence I make the following

Special Findings of Fact.

Plaintiff Walter Gobitis is a citizen of the United States and of the Commonwealth of Pennsylvania and is a resident of the Borough of Minersville, Schuylkill County, Pennsylvania. Plaintiffs Lillian Gobitis (hereinafter called Lillian) and William Gobitis (hereinafter called William), are his children. Lillian was born November 2, 1923 and is now

fifteen years of age. William was born September 17, 1925 and is now thirteen years of age. Both of them are citizens of the United States and of the Commonwealth of Pennsylvania and reside with their parents in the Borough of Minersville where they have lived for many years.

The Minersville School District is a public school district of the Commonwealth of Pennsylvania embracing the territory of the Borough of Minersville. The individual defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf were at the time this suit was brought the duly elected and acting members of the Board of Education (hereinafter called the Board) of the Minersville School District, having the management and control of the Minersville Public Schools. David I. Jones is no longer a member of the Board, having been succeeded by Dr. E. W. Keith. George Beatty is no longer a member of the Board having died January 30, 1938. Defendant Charles E. Roudabush is the superintendent of the Minersville Public Schools appointed by and acting under the direction and supervision of the Board. All of the surviving defendants are residents of the Borough of Minersville and citizens of the Commonwealth of Pennsylvania and of the United States.

The Minersville Public Schools were and are free public schools under the supervision and jurisdiction of the Board. William and Lillian were placed in the Minersville Public School by their father, Walter Gobitis, at the beginning of the school year 1935-1936 and attended the school until November 6, 1935.

On November 6, 1935 at a regular meeting of the Board the following school regulation was adopted:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

Lillian and William having failed to salute the national flag at the daily exercises of the Minersville Public School, defendant Charles E. Roudabush on November 6, 1935 at the direction of the Board and immediately after the adoption of the regulation above quoted, publicly announced: "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Waslewski for this act of insubordination, to wit, failure to salute the flag in our school exercises." Since that date Lillian and William have not been permitted to attend the Minersville Public School.

Lillian and William and their father, Walter Gobitis, are members of an association of Christian people calling themselves Jehovah's Witnesses. Each of the plaintiffs as a member of that association has covenanted with Jehovah God to do His will and to obey His commandments. They accept the Bible as the word of God and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Each of the three plaintiffs sincerely and honestly believes that the act of saluting a flag contravenes the law of God because (a) it is a violation of the Divine commandment stated in verses 3, 4 and 5 of the twentieth chapter of the Biblical book of Exodus that "Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; Thou shalt not bow down thyself to them, nor serve them . . ." in that such a salute signifies that the flag is an exalted emblem or image of the Government and as such entitled to the respect, honor, devotion, obeisance and reverence of the salutor, and (b) it means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that, since the flag and the Government which it symbolizes are of the world and not of Jehovah God, it is wrong to salute the flag and to do so denies the supremacy of Almighty God, and contravenes his express command as set forth in Holy Writ.

The refusal of Lillian and William to salute the flag in the Minersville Public School was based solely upon their sincerely held religious convictions that the act was forbidden by the express command of God as set forth in the Bible. Both they and their father, Walter Gobitis, are loyal American citizens who honor and respect their state and country and who are willing and ready to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. Their refusal to salute the flag was not intended by them to be disrespectful to the Government and it did not promote disrespect for the Government and its laws nor endanger the public safety, health or morals or the property or personal rights of their fellow citizens.

The enforcement of defendants' regulation requiring the flag salute by children who are sincerely opposed to it upon conscientious religious grounds is not a reasonable method of teaching civics, including loyalty to the State and Federal Government, but tends to have the contrary effect upon such children.

From the last week of December, 1935 to the end of May, 1937 (except for holidays and vacation periods) Lillian attended the Jones Kingdom School at Andreas, Pennsylvania, and from September, 1937 to the date of hearing, February 15, 1938 (except for holidays and vacation), she attended the Pottsville Business College. From the last week of December, 1935 to the date of hearing, February 15, 1938 (except for holidays and vacation periods), William attended the said Jones Kingdom School. Both the Jones Kingdom School and the Pottsville Business College are private schools whose patrons are required to pay for the tuition of the children attending them.

Up to the present time Walter Gobitis has expended for the education of Lillian since November 6, 1935 a sum in excess of \$600 and he will be required to expend for her education in the future during the period she is required by the Pennsylvania School Code to remain in school a sum not

less than \$600, or \$1,200 in all. Up to the present time Walter Gobitis has expended for the education of William since November 6, 1935 a sum in excess of \$800 and he will be required to expend for his education in the future during the period he is required by the Pennsylvania School Code to remain in school a sum not less than \$1,200, or \$2,000 in all.

Discussion.

This suit has been brought to restrain the enforcement against the minor defendants of a school regulation requiring a daily salute to the flag. It is based upon the ground that the enforcement of this regulation as a condition of the exercise of their right to attend the public schools, infringed the liberty of conscience guaranteed them by the Fourteenth Amendment to the Federal Constitution.

The important legal questions which the case raises were fully discussed in our opinion denying the defendants' motion to dismiss the bill. 21 F. Supp. 581. We there held that the liberty guaranteed by the Fourteenth Amendment includes liberty to entertain any religious belief and to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, health, morals, property or personal rights of the people. We further held that the minor plaintiffs have a right to attend the public schools and that to require them, as a condition of the exercise of that right, to participate in a ceremony which runs counter to religious convictions sincerely held by them, would violate the Pennsylvania Constitution and infringe the liberty guaranteed them by the Fourteenth Amendment, unless it should appear that the public safety, health or morals or the property or personal rights of their fellow citizens would be prejudiced by their refusal to participate.

The facts as I have found them sustain the allegations of the bill. No one who heard the testimony of the plaintiffs and observed their demeanor upon the witness stand could have failed to be impressed with the earnestness and sincerity of their convictions. While the salute to our na-

Constitutional flag has no religious significance to me and while I find it difficult to understand the plaintiffs' point of view, I am nevertheless entirely satisfied that they sincerely believe that the act does have a deep religious meaning and is an act of worship which they can conscientiously render to God alone. Under these circumstances it is not for this court to say that since the act has no religious significance to us it can have no such significance to them. As we said in our former opinion (21 F. Supp. 584), under our Constitutional principles "If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is, if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty."

I think it is also clear from the evidence that the refusal of these two earnest Christian children to salute the flag cannot even remotely prejudice or imperil the safety, health, morals, property or personal rights of their fellows. While I cannot agree with them I nevertheless cannot but admit that they exhibit sincerity of conviction and devotion to principle in the face of opposition of a piece with that which brought our pioneer ancestors across the sea to seek liberty of conscience in a new land. Upon such a foundation of religious freedom our Commonwealth and Nation were built. We need only glance at the current world scene to realize that the preservation of individual liberty is more important today than ever it was in the past. The safety of our nation largely depends upon the extent to which we foster in each individual citizen that sturdy independence of thought and action which is essential in a democracy. The loyalty of our people is to be judged not so much by their

words as by the part they play in the body politic. Our country's safety surely does not depend upon the totalitarian idea of forcing all citizens into one common mold of thinking and acting or requiring them to render a lip service of loyalty in a manner which conflicts with their sincere religious convictions. Such a doctrine seems to me utterly alien to the genius and spirit of our nation and destructive of that personal liberty of which our flag itself is the symbol.

It follows that the regulation in question, however, valid and reasonable it may be when applied to others, cannot constitutionally be applied to the plaintiffs as a condition of the right of Lillian and William to attend the public schools and of their father to have them do so.

A question of jurisdiction remains to be considered. In our former opinion we held that the case is one arising under the Constitution of the United States of which this court has jurisdiction under subdivision (1) of Section 24 of the Judicial Code if the matter in controversy exceeds the sum or value of \$3,000. The bill contained a clear averment that the jurisdictional amount was involved. This, however, was contraverted by the answer. The amount involved is to be measured by the value of the right to be protected. In this case the right involved is the right to attend the public schools and its value may be measured by the cost of obtaining an equivalent education at private institutions. I have found that cost in the case of Lillian to be \$1,200 and in the case of William to be \$2,000.

The defendants urge that the rights of Lillian and William are separate rights, the value of which must be separately considered for jurisdictional purposes, and since neither reaches \$3,000 the jurisdictional amount is not involved and the bill must be dismissed. The defendants, however, overlook the fact that the obligation to provide for the education of these two children rests upon their father, the plaintiff Walter Gobitis, who is a proper party to the suit, since his right to have his children educated in the public school is also affected. Furthermore he is re-

quired by Section 1414 of the Pennsylvania School Code as amended (24 P. S. Pa. § 1421), to send his children to school, and under Section 1423 (24 P. S. Pa. § 1430) is guilty of a misdemeanor if he fails to comply with the provisions of the act regarding compulsory school attendance. The amount involved in the suit, so far as he is concerned is, therefore, \$1,200 plus \$2,000. These amounts he may aggregate for the purpose of determining jurisdiction. *Kimel v. Missouri State Life Ins. Co.*, 71 F. (2d) 921. This court, therefore, has jurisdiction of the bill as to him and consequently as to the minor plaintiffs also. *Grosjean v. American Press Co.*, 297 U. S. 233.

I accordingly reach the following

Conclusions of Law.

This court has jurisdiction of the suit.

The regulation adopted by the defendants on November 6, 1935, as applied to the minor plaintiffs as a condition of their right to attend the Minersville Public Schools, deprives the plaintiffs of their liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

The plaintiffs are entitled to an injunction against the defendants restraining them from continuing in force the order expelling the minor plaintiffs from the Minersville Public School and prohibiting their attendance at said school and from requiring the minor plaintiffs to salute the national flag as a condition of their right to attend the said school.

A decree may be entered in accordance with this opinion.

DECREE.

(Filed July 11, 1938.)

This cause coming on to be heard before the HONORABLE ALBERT BRANSON MARIS, holding the United States District Court for the Eastern District of Pennsylvania, upon the pleadings and proof on file, and all stipulations and arguments of counsel thereon.

From the consideration of all of which thereof it is on this eleventh day of July, A. D. 1938

ADJUDGED, ORDERED and DECREED:

1. That the matter in dispute in this cause, exclusive of interest and costs, exceeds the sum or value of three thousand (\$3000) dollars.

2. That the regulation of the Board of Education of the Minersville Public Schools adopted on the sixth day of November, A. D., 1935, which said regulation is in words and figures as follows, to wit:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

as applied to the minor complainants as a condition of their right to attend the Minersville Public Schools is null and void in that it deprives them of liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the defendants, Minersville School District; Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent.

of Minersville Public Schools, their agents, servants, officers and attorneys, and each of them be, and they hereby are perpetually enjoined and restrained from

- (a) continuing in force the order expelling the said minor complainants from the Minersville Public Schools and from prohibiting their attendance at said schools;
- (b) requiring said minor complainants to salute the national flag as a condition of their right to attend said schools.

4. That the defendants, Minersville School District Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, pay all the costs of this cause, for which execution will issue.

Dated and entered this eleventh day of July, A. D. 1938.

MARIS, J.

STIPULATION.

(Filed August 9, 1938.)

And now, to wit, this ninth day of August, 1938, it stipulated and agreed by and between Harry M. McCaughey, Esq., attorney for plaintiffs, and John B. McGurl, Esq., and Rawle & Henderson, Esqs., attorneys for defendants, that the above-entitled proceedings in equity be discontinued as to George Beatty, one of the defendants in the above-entitled case.

H. M. McCAUGHEY,
Attorney for Plaintiffs.
JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

Approved:

MARIS, J.

**PRÆCIPE TO MARK CASE DISCONTINUED AS TO
GEORGE BEATTY, ONE OF THE DEFENDANTS.**

(Filed August 9, 1938.)

To the Clerk:

Kindly mark the above-entitled proceedings in equity discontinued as to George Beatty, one of the defendants in the above-entitled case, in accordance with the stipulation approved by the Court and filed of record.

H. M. McCAUGHEY,
Attorney for Plaintiffs.
JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

PETITION FOR APPEAL.

(Filed August 9, 1938.)

And now, to wit, this ninth day of August, A. D. 1938, Minersville School District, Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf and Charles E. Roudabush, superintendent of Minersville public schools, considering themselves aggrieved by the decree made and entered hereon on the eleventh day of July, A. D. 1938, in the above entitled cause, do hereby appeal from said decree and the provisions thereof to the United States Circuit Court of Appeals for the Third Circuit for the reasons specified in the assignments of error which are filed simultaneously herewith, and they pray that this appeal and review may be allowed, and that a transcript of the record, papers and proceedings upon which such order was made, and duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Circuit.

And your petitioners desire that said appeal shall operate as a supersedeas, and therefore pray that an order be made fixing the amount of security which your petitioners shall give and furnish upon such an appeal, and that, upon giving bond in an amount to be fixed by this Court, the said appeal may operate as a supersedeas and may suspend during the pendency of said appeal the effect of any injunction.

JOHN B. MCGURL,
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Attorneys for Defendants.

August 9, 1938.

ORDER ALLOWING APPEAL.

(Filed August 9, 1938.)

And now, to wit, this ninth day of August, A. D. 1938, it is ordered that an appeal be allowed as prayed for; and it is further ordered that said appeal shall operate as a supersedeas of the decree made and entered in the above-entitled cause and shall suspend and stay all further proceedings in this court, including any injunction until the termination of said appeal by the United States Circuit Court of Appeals for the Third Circuit upon bond being filed in the amount of \$250.

By THE COURT,

MARIS,

J.
e

ASSIGNMENTS OF ERROR.

(Filed August 9, 1938.)

And now come Minersville School District, Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf and Charles E. Roudabush, superintendent of Minersville public schools, petitioners, and file the following assignments of error on appeal from the decree of this Court, dated July 11, 1938:

1 The learned Court erred in denying defendants' motion to dismiss, to wit:

"Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, defendants, by

their attorneys John G. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above entitled case upon grounds and reasons therefor as follows:

1. The matters set forth in plaintiffs' bill of complaint do not involve a dispute or controversy within the jurisdiction of this Court.

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of \$3000.00 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.

7. The bill of complaint fails to show that the plaintiffs have sustained or in the future are likely to sustain any loss, damage or injury for which the defendants are liable either at law or in equity.

8. Under the Constitution of the United States and under the Constitution and laws of the State of Pennsylvania the defendants have full power and authority

to adopt the regulation complained of and to enforce its provisions as set forth in the bill of complaint.

Therefore the defendants and each of them respectively move the Court to dismiss the bill of complaint with their reasonable costs and charges on their behalf most wrongfully sustained."

"MARIS, J.

The motion to dismiss the bill is denied."

2. The learned Court erred in denying defendants' motion to dismiss, which motion was made at the commencement of the hearing in the above case, to wit:

"MR. HENDERSON: May it please the Court, this matter was first brought before you on a bill in equity filed by the complainants, and then a motion to dismiss filed by the school board, the Minersville School District. Your Honor has ruled upon that and is familiar with the matter.

Since that time we have filed an answer. I now, therefore, wish to file a further motion to dismiss the Bill of Complaint, and if Your Honor desires, I want to set forth the same motion that I did with reference to the motion to dismiss before we filed an answer, and for the purpose of the record it may appear, and I can just ask the Stenographer to copy it.

THE COURT: Very well.

MR. HENDERSON: Exactly the same motion that we filed before, a motion to dismiss.

THE COURT: You may submit it to the Stenographer.

MR. HENDERSON: From 2 to 6 inclusive, which are exactly the same ones that are in the record already.

MOTION TO DISMISS BILL OF COMPLAINT.

Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, defendants, by their attorneys John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above entitled case upon grounds and reasons therefor as follows:

1. . . .

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of \$3000.00 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.

MR. HENDERSON: Therefore, if Your Honor please, we object to the taking of any testimony in this case upon the ground set forth in these motions.

THE COURT: For the reasons set forth in the opinion of the Court heretofore filed, the motion to dismiss is overruled, with an exception to the defendants."

3. The learned Court erred in permitting the plaintiff, Walter Gobitis, to testify what it cost him to run his car per mile, to wit:

"Q. Do you know what it costs you a mile to run your car?

A. Yes, sir.

MR. HENDERSON: Now, if Your Honor please, I object to this, I think it is purely conjectural. There is nothing definite upon which to base it. He even says during part of this time in the winter he never even made any trips, there were some weeks he didn't even go at all. He doesn't pick up and go every time he wants to see his children; if he does, I don't think it can be put on the school district.

MR. MOYLE: It isn't being put on the school district.

MR. HENDERSON: It is a basis for the damage, which arrives at the same conclusion.

THE COURT: I will overrule the objection.

MR. HENDERSON: Will Your Honor grant me an exception?

THE COURT: Exception to the defendants."

4. The learned Court erred in admitting into evidence Plaintiffs' Exhibit "E," "F" and "G," regarding expenses at Pottsville Business College, to wit:

MR. HENDERSON: Have you offered these bills in evidence?

MR. MOYLE: I will.

MR. HENDERSON: I am going to object to them.

THE COURT: On what ground?

MR. HENDERSON: Upon the ground they sent the daughter to business school, and that there are other schools available in that community. There is no evidence they have tried to send the child to any other school, and I don't think the expense of sending her to this business college is a proper item.

THE COURT: I don't understand that. They were expelled from the public schools.

MR. HENDERSON: Only one, but there are plenty of schools in that adjacent country around there.

THE COURT: They were private schools as to them; in other words, if they were sent to some other school they would have to pay tuition.

MR. HENDERSON: But they wouldn't have to pay this.

THE COURT: Objection overruled, exception for the defendant."

5. The learned Court erred in overruling defendants' motion that bill be dismissed on the ground that they had not established the required jurisdictional amount, to wit:

"MR. HENDERSON: That's all. If your Honor please, at this time I assume that my friends have nothing further to show on the matter of damage, and the jurisdictional question in order to get into this Court, and I move that the bill be dismissed on the ground that they have not shown the jurisdictional amount as required.

THE COURT: I don't know whether they have or not.

MR. HENDERSON: I have computed it, and I find it comes quite far short.

THE COURT: Well, I will overrule the motion for the present.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Yes, exception.

MR. HENDERSON: At this stage?

THE COURT: Yes."

6. The learned Court erred in overruling defendants' objection to the offer of proof regarding testimony of Frederick William Franz, to wit:

"MR. HENDERSON: If your Honor please, may I ask for an offer of proof in connection with this witness?

MR. MOYLE: May it please the Court, through this witness I hope to prove, or offer to prove that he is one of Jehovah's Witnesses; that he has been one of Jehovah's Witnesses for many years and is thoroughly acquainted with the principles and teachings of Jehovah's Witnesses, especially concerning the salute to the flag, and concerning consecration to the Lord, and their obligation to obey His law, and such matters. Those matters are alleged in our bill and are denied by the defense.

MR. HENDERSON: If your Honor please, I object to it as immaterial. It is the belief of the Gobitas' and not this gentlemen.

THE COURT: Yes, they are members of the group, they have expressed their views. I don't know just what your position is, if your view is they don't hold these beliefs, that may be one thing. It may be immaterial. If, however, you concede that the views expressed by the witnesses are the religious beliefs—

MR. HENDERSON: There was some noise, I didn't hear.

THE COURT: I say if the defendants concede that the views which the plaintiffs have expressed on the stand are the religious beliefs that they hold, then I should say this is immaterial.

MR. HENDERSON: If your Honor please, of course, I am not in a position to concede anything in that connection. I think it is their belief, and it is not for me to state what their belief is, that is a question of fact. This has nothing to do with it.

MR. MOYLE: It would be only explanatory, I suppose.

THE COURT: Will you make your offer a little more fully, Mr. Moyle? Just what is it you are proposing to prove?

MR. MOYLE: We expect to show definitely through this witness that the law of God does prohibit a salute to the flag, that Jehovah's Witnesses as a group of the Christian Church are definitely bound by that law and must obey it, that refusal to so obey it would result in eternal destruction, and that is a belief which Jehovah's Witnesses hold and sincerely maintain. I think we alleged that quite clearly in our bill. It is corroborative of the testimony offered by the complainants.

MR. HENDERSON: If your Honor please, I object to the offer.

THE COURT: It may go to the question of the sincerity of the religious beliefs which these people alleged that they hold. I will permit the testimony.

MR. HENDERSON: And grant me an exception?

THE COURT: Exception."

7. The learned Court erred in overruling defendants' motion to strike out the testimony of Frederick William Franz, to wit:

"MR. HENDERSON: If your Honor please, I now wish to renew my motion to strike out the testimony of this witness as immaterial in connection with this case. It is based, of course, upon opinion, and it has no par-

ticular bearing, so far as I can see it in the case. 'The plaintiffs are the Gobitis'; if there is any religious belief that is involved, it is their religious belief. They belong to Jehovah's Witnesses; we do not know that they believe any of these things that this gentleman is speaking about. We only know what they testified to on the stand, themselves.

THE COURT: Of course, this Court is not concerned with the validity of the religious beliefs held by these persons; it is only concerned, if at all, with the sincerity of them, and whether they are held by the individuals as religious beliefs. It seems to me this testimony may have some bearing on that question; therefore, I will overrule your motion and grant you an exception."

8. The learned Court erred in making the following finding of fact, to wit:

"They" (the plaintiffs) "... conscientiously believe that a failure to obey the precepts and Commandments laid down therein" (referring to the Bible) "will in due time result in their eternal destruction."

9. The learned Court erred in making the following finding of fact, to wit:

"Both they and their father, Walter Gobitis, are loyal American citizens who honor and respect their state and country and who are willing and ready to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. Their refusal to salute the flag was not intended by them to be disrespectful to the Government and it did not promote disrespect for the Government and its laws nor endanger the public safety, health or morals or the property or personal rights of their fellow citizens"

and in refusing the defendants' twenty-seventh request for finding of fact, to wit:

"27. The failure or refusal of Lillian Gobitis and of William Gobitis or of any pupil or group of pupils to salute the national flag was and would be disrespectful to the government of which the flag is a symbol and tends and will tend to promote disrespect for that government and its laws with the result that the public welfare and safety and well being of the citizens of the United States will be ultimately harmed and seriously affected thereby."

10. The learned Court erred in making the following finding of fact, to wit:

"The enforcement of defendants' regulation requiring the flag salute by children who are sincerely opposed to it upon conscientious religious grounds is not a reasonable method of teaching civics, including loyalty to the State and Federal Government, but tends to have the contrary effect upon such children."

and in refusing the defendants' sixth request for finding of fact, to wit:

"6. Said regulation provided the reasonable method of teaching 'civics, including loyalty to the State and Federal Government' and its adoption was within the authority of the defendant Board of Education."

and in refusing the defendants' fifth and sixth requests for conclusions of law, to wit:

"5. The Board of Education of Minersville School District had the authority to adopt reasonable regulations regarding the conduct and studies of pupils in its school district and to expel pupils, such as the minor plaintiffs, for refusal to obey such regulations.

6. The resolution requiring pupils to salute the national flag as a part of the daily exercises of the school is reasonable."

11. The learned Court erred in making the following finding of fact, to wit:

"Up to the present time Walter Gobitis has expended for the education of Lillian since November 6, 1935 a sum in excess of \$600 and he will be required to expend for her education in the future during the period she is required by the Pennsylvania School Code to remain in school a sum not less than \$600 or \$1,200 in all. Up to the present time, Walter Gobitis has expended for the education of William since November 6, 1935, a sum in excess of \$800 and he will be required to expend for his education in the future during the period he is required by the Pennsylvania School Code to remain in school a sum not less than \$1,200, about \$2,000 in all."

and in refusing defendants' twenty-fifth request for finding of fact, to wit:

"25. Walter Gobitis has not already expended and in all probability will not expend until William Gobitis and Lillian Gobitis respectively attain the age of 18 years the sum of \$3000.00 on account of educating the said William Gobitis and Lillian Gobitis since their expulsion from the Minersville Public Schools."

12. The learned Court erred in holding in its opinion *sur* motion to dismiss that the plaintiffs had stated a good cause of action and in holding in its opinion *sur* bill, answer and proofs that the facts in this case are still governed by its opinion *sur* motion to dismiss, to wit:

"The important legal questions which the case raises were fully discussed in our opinion, denying the defendants' motion to dismiss the bill. (21 F. Sup. 581)."

13. The learned Court erred in holding as follows:

"I think it is also clear from the evidence that the refusal of these two earnest Christian children to salute

the flag cannot even remotely prejudice or imperil the safety, health, morals, property or personal rights of their fellows."

14. The learned Court erred in holding as follows:

"It follows that the regulation in question, however, valid and reasonable it may be when applied to others, cannot constitutionally be applied to the plaintiffs as a condition of the right of Lillian and William to attend the public schools and of their father to have them do so."

15. The learned Court erred in holding as follows:

"Under these circumstances it is not for this court to say that since the act has no religious significance to us it can have no such significance to them."

and in refusing defendants' requests for findings of fact Nos. 10 to 13, inclusive, to wit:

"10. The act of saluting the national flag is not a violation of any of the commandments of God as set forth in the Bible; it is not an act of idolatry or worship of an image in place of God, and has no reference to nor does it affect or concern one's religious beliefs or one's manner of religious worship.

11. The act of saluting the national flag is no more than an acknowledgment of the temporal sovereignty of our country and has nothing to do with religion. It is not a religious rite but merely a part of a patriotic ceremony.

12. The act of saluting the national flag does not go beyond that which is reasonably due any government.

13. The act of saluting the national flag is merely an awakening in the minds of youth of a civic consciousness and of loyalty to government."

16. The Court erred in holding as follows:

"The amount involved in the suit, so far as he is concerned, is, therefore, \$1,200 plus \$2,000. These amounts he" (the father—plaintiff) "may aggregate for the purpose of determining jurisdiction."

and in refusing defendants' twenty-sixth request for finding of fact, to wit:

"26. The amount in controversy does not exceed the sum of \$3000.00 exclusive of interest and costs."

17. The learned Court erred in refusing the defendants' seventh request for finding of fact, to wit:

"7. Subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public School at the opening of school to rise, place their right hand on their respective breasts and to speak the following words: 'I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all'. The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands ~~so as~~ to salute the flag."

18. The learned Court erred in refusing the defendants' twenty-first request for finding of fact, to wit:

"21. Neither Walter Gobitis nor his children Lillian Gobitis or William Gobitis have made any attempt to be admitted to classes at any of the four parochial grade schools in Minersville or the parochial high school in Pottsville, Pennsylvania, which is only four miles distant from Minersville."

19. The learned Court erred in refusing the defendants' twenty-second request for finding of fact, to wit:

"22. The parochial schools in Minersville and vicinity permit persons of other religious beliefs to attend their institution, many of such persons attending by mere subscription of whatever they are able to pay and many of such persons attending at no cost whatsoever."

20. The learned Court erred in making the following conclusion of law, to wit:

"This Court has jurisdiction of the suit."

and in refusing defendants' first request for conclusion of law, to wit:

"1. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not exceed the sum or value of \$3000.00, exclusive of interest and cost."

21. The learned Court erred in making the following conclusion of law, to wit:

"This Court has jurisdiction of the suit."

and in refusing defendants' second request for conclusion of law, to wit:

"2. This Court has no jurisdiction of this suit under subsection 1 of section 24 of the Judicial Code (28 U. S. C. A. sec. 41 (1)) because the matter in controversy does not arise under the Constitution or laws of the United States."

22. The learned Court erred in making the following conclusion of law, to wit:

"This Court has jurisdiction of the suit."

and in refusing defendants' third request for conclusion of law, to wit:

"3. This Court has no jurisdiction of this suit under subsection 14 of section 24 under the Judicial

Code (28 U. S. C. A. sec. 41 (14)) because the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States or of any right secured by any law of the United States."

23. The learned Court erred in making the following conclusion of law, to wit:

"The regulation adopted by the defendants on November 6, 1935, as applied to the minor plaintiffs as a condition of their right to attend the Minersville Public Schools, deprives the plaintiffs of their liberty without due process of Law in violation of the Fourteenth Amendment to the Constitution of the United States."

and in refusing the defendants' seventh and eighth requests for conclusions of law; to wit:

"7. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the United States.

8. The enforcement of said regulation would not violate any right, privilege or immunity secured to the plaintiffs under the Constitution of the Commonwealth of Pennsylvania."

24. The learned Court erred in making the following conclusion of law, to wit:

"The plaintiffs are entitled to an injunction against the defendants restraining them from continuing in force the order expelling the minor plaintiffs from the Minersville Public School and prohibiting their attendance at said school and from requiring the minor plaintiffs to salute the national flag as a condition of their right to attend the said school."

and in refusing the defendants' fourth and ninth requests for conclusions of law

"4. The plaintiffs have failed to establish cause of action entitling them to the relief sought in their Bill of Complaint.

9. The attendance at public schools in the Commonwealth of Pennsylvania is a privilege or advantage which is to be enjoyed by its citizens subject to reasonable conditions and restrictions imposed by the legislature through the local boards of education, and in this case through the Board of Education of Minersville School District. It is not a right entitling the plaintiffs to the relief sought in their Bill of Complaint."

25. The learned Court erred in entering final decree, to wit:

"This cause coming on to be heard before the HONORABLE ALBERT BRANSON MARIS, holding the United States District Court for the Eastern District of Pennsylvania, upon the pleadings and proof on file, and all stipulations and arguments of counsel thereon.

From the consideration of all of which thereof it is on this 11th day of July, A. D. 1938

ADJUDGED, ORDERED and DECREED:

1. That the matter in dispute in this cause, exclusive of interest and costs, exceeds the sum or value of Three Thousand (\$3,000.00) Dollars.

2. That the regulation of the Board of Education of the Minersville Public Schools adopted on the 6th day of November, A. D. 1935, which said regulation is in words and figures as follows, to wit:

'That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly.'

as applied to the minor complainants as a condition of their right to attend the Minersville Public Schools is null and void in that it deprives them of liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

3. That the defendants Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, their agents, servants, officers and attorneys, and each of them be, and they hereby are perpetually enjoined and restrained from

- (a) continuing in force the order expelling the said minor complainants from the Minersville public schools and from prohibiting their attendance at said schools;
- (b) requiring said minor complainants to salute the national flag as a condition of their right to attend said schools.

4. That the defendants Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville public schools, pay all the costs of this cause, for which execution will issue.

Dated and entered this 11th day of July, A. D. 1938.

By THE COURT

MARIS, J."

Wherefore your petitioners pray that said decree may be reversed and plaintiffs' bill of complaint dismissed with reasonable costs and charges on petitioners' behalf most wrongfully sustained, and for such other and further relief as may seem just and proper.

JOHN B. MCGURL,

RAWLE & HENDERSON,

By JOSEPH W. HENDERSON,

*Attorneys for Petitioners and
Appellants.*

CITATION.

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES,

*To Walter Gobitis, Individually and Lillian Gobitis, and
William Gobitis, Minors by Walter Gobitis, Their Next
Friend,*

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States, Eastern District of Pennsylvania, wherein Minersville School District, Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf and Charles E. Roudabush, superintendent of Minersville public schools, are appellants, and you are appellee to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable ALBERT B. MARIS, United States Circuit Judge, this tenth day of August, in the year of our Lord one thousand nine hundred and thirty-eight.

(Sgd.) ALBERT B. MARIS,
Circuit Judge.

August 11, 1938.

Service accepted.

(Sgd.) H. M. McCAUGHEY,
Attorney for Plaintiff-Appellees.

PRÆCIPE FOR TRANSCRIPT OF RECORD.

(Filed August 15, 1937.)

To the Clerk:

In making up the record on appeal of the above case, you will include the following papers and no others:

Docket entries.

Bill of complaint.

Motion to dismiss.

Opinion of Court sur motion to dismiss.

Answer of defendants.

Stipulation regarding statement of evidence.

Statement of evidence under Equity Rule 75.

Order approving statement of evidence.

Plaintiffs' requests for findings of fact and conclusions of law.

Defendants' requests for findings of fact and conclusions of law.

Suggestion of death of George H. Beatty, one of the defendants.

Opinion of Court sur hearing on bill, answer and proofs.

Final decree filed July 11, 1938.

Stipulation regarding discontinuance of case against George Beatty.

Præcipe to mark case discontinued as to George Beatty.

Petition for appeal.

Order allowing appeal.

Assignments of error.

Citation.

Præcipe sur transcript of record.

Clerk's certificate.

(Sgd.) JOHN B. MCGURL,

RAWLE & HENDERSON,

By THOMAS F. MOUNT,

Attorneys for Appellants.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } ss.:

I, GEORGE BRODBECK, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of so much of the pleas and proceedings; in the case of Walter Gobitis, individually, and Lillian Gobitis and William Gobitis, minors, by Walter Gobitis, their next friend v. Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans, and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, No. 9727 March Term 1937; as per *præcipe* filed, a copy of which is hereby attached, the transcript of record in the above-entitled cause is to include now remaining among the records of the said court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the
(Seal) aforesaid court at Philadelphia, this twenty-second day of August, A. D. 1938.

GEORGE BRODBECK,
Clerk.

**ORDER ASSIGNING HON. HARRY E. KALODNER FOR
ARGUMENT.**

(Filed November 9, 1938.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

Minersville School District, Board of Education, et al.,
Defendants-Appellants,

v.

Walter Gobitis, Ind. and Lillian Gobitis, and Wm. Gobitis,
Minors by Walter Gobitis, Their Next Friend,
Plaintiffs-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

And now, to wit: this ninth day of November, A. D., 1938, it is ordered that Hon. Harry E. Kalodner, District Judge, for the Eastern District of Pennsylvania, is hereby assigned to sit in above case in order to make a full court.

J. WARREN DAVIS,
Circuit Judge.

(Endorsements: Order Assigning Hon. Harry E. Kalodner for Argument Received and Filed November 9, 1938, Wm. P. Rowland, Clerk.)

REFERENCE TO ARGUMENT.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

Minersville School District, Board of Education of Minersville School District, Consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools,

Defendants-Appellants,

v.

Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,

Plaintiffs-Appellees.

And afterwards, to wit, on the ninth day of November, 1938, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable William Clark, Circuit Judges, and Honorable Harry E. Kalodner, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the tenth day of November, 1938, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

MINERSVILLE SCHOOL DISTRICT, BOARD OF
EDUCATION OF MINERSVILLE SCHOOL DIS-
TRICT, CONSISTING OF DAVID I. JONES, DR. E. A.
VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL,
THOMAS B. EVANS AND WILLIAM ZAPF, AND
CHARLES E. ROUDABUSH, SUPERINTENDENT OF
MINERSVILLE PUBLIC SCHOOLS,

Defendants-Appellants,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN
GOBITIS AND WILLIAM GOBITIS, MINORS, BY
WALTER GOBITIS, THEIR NEXT FRIEND,
Plaintiff-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

OPINION.

(Filed November 10, 1939.)

Before BIGGS and CLARK, *Circuit Judges*, and KALODNER,
District Judge.

CLARK, *Circuit Judge.*

Eighteen big states ¹ have seen fit to exert their power
over a small number of little children ² ("and forbid them

¹ Total population according to the latest census circa
38,000,000.

² According to the latest casualty lists circa 120.

not"). The method of exercise has sometimes been by their representatives in solemn conclave assembled and sometimes, as here, by an administrative agency (School Board). The matter of exercise is in that field where, above all, or so we had supposed, power must yield to principle. In other words, the area of action is within the aura of conscience.

The appellant School Board is entrusted by statute of Pennsylvania with the delicate, but surely not difficult, task of instructing the public school children under its control in "civics including loyalty to the State and National Government", 24 Purdon's Pa. Stat. Ann., sec. 1551. To that end, as we assume it thought, the following regulation was promulgated on November 6, 1935:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly".

Record, p. 6

The appellees, a little girl of 13 and a little boy of 12, refused to salute the flag of "their country" on the appropriate occasion. They stood in respectful silence while the other children submitted to the "requirement" and were "dealt with accordingly" by being expelled.

The reason for their refusal raises the constitutional issue of this appeal. They and their parents are members of a group (we avoid for the present more definite characterization) known as Russellites, or more colloquially, Earnest Bible Students,³ and Jehovah's Witnesses. The

³ " . . . I consider them quacks . . . I dissolve the 'Earnest Bible Students' in Germany; their property I dedicate to the people's welfare; I will have all their literature confiscated."

Pronouncement of A. Hitler, April 4, 1935.

defendant School Board admits that this group "sincerely and honestly believe that the act of saluting a flag contravenes the law of God" in that it constitutes a bowing down to a graven image.

The so-called flag salute statute or regulation first appeared in Kansas in 1907. The idea, without benefit of sanctions, seems to have originated with an employee of the magazine, *The Youth's Companion*. It was first put in practice at the National Public School celebration on October 21, 1892, pamphlet, *The Youth's Companion Flag Pledge*. As with its related predecessor the teacher's oath (Nevada, 1866) the voluntary character of the ceremonial act soon disappeared into law and litigation, pamphlet, *Oaths of Loyalty for Teachers*, published by American Federation of Teachers, Chicago, Illinois. There is some current indication of a reversal in the trend of public opinion at least. Those who attended the training camps of World War No. 1 will remember our staff of life, the manuals of Colonel Moss. That distinguished officer, now retired, has also written extensively on the American flag. In his latest book, we find him taking a secular position remarkably like that of the plaintiff-appellees. He says:

"Another form that false patriotism frequently takes is so-called 'Flag-worship'—blind and excessive adulation of the Flag as an emblem or image,—super-punctiliousness and meticulousity in displaying (and saluting the Flag—without intelligent and sincere understanding and appreciation of the ideals and institutions it symbolizes. This, of course, is but a form of idolatry—a sort of 'glorified idolatry', so to speak. When patriotism assumes this form it is nonsensical and makes the 'patriot' ridiculous".

Chap. 14, *Patriotism of the Flag*, Moss, *The Flag of the United States, Its History and Symbolism*, pp. 85-86.

So also, Mr. Laurens M. Hamilton, a direct descendant of Alexander Hamilton, president of the New York Chapter

of the Sons of the American Revolution (an organization never criticized for its lack of patriotism) told the Daughters of the American Revolution at the forty-second annual meeting of the Washington Heights Chapter:

"Laws cannot take the place of feeling. We must beware of legislation such as that forcing people to salute the flag. We cannot make people salute, we cannot force them to or command them to. What we can do, is to make them want to salute it".

The New York World Telegram, April 14, 1939

This change in social sentiment appears to have reached the consciousness of only one legislator. In Massachusetts this year Mr. Curtis introduced an amendment to the original act which expressly permits the excusing from the flag salute of pupils whose "parent or guardian has scruples, which he regards as religious, against such salute", Senate No. 449, March, 1939 (Mass.). In New Jersey, on the other hand, the opposite is true. The original act was "strengthened" to make a crime of "influencing a pupil against the salute to the flag by instruction printed or otherwise", P. L. N. J. 1939, c. 65, sec. 1.

These little children ("suffer them") are asking us to afford them the protection of the First Amendment (Bill of Rights⁴) to the Constitution and to permit them the

⁴ The actual amendment is the Fourteenth, the action complained of being by a state. The Supreme Court has, however, reversed its original holding, *Barton v. Baltimore*, 7 Peters 242 (1833), that the privileges of the Bill of Rights are not included within the term "due process", *Gitlow v. New York*, 268 U. S. 652, *Whitney v. California*, 274 U. S. 357, *Burns v. U. S.*, 274 U. S. 328, *Stromberg v. California*, 283 U. S. 359, *Near v. Minnesota*, 283 U. S. 659, *Grosjean v. American Press Co.*, 297 U. S. 233; Shattuck, *The True Meaning of the Term "Liberty" In Those Clauses in the Federal and State Constitutions Which Protect "Life, Liberty and Property"*, 4 *Harvard Law Review*, 365; Warren, *The New "Liberty" Under the Fourteenth Amendment*, 39 *Harvard Law Review* 431; *Bill of Rights*

"free exercise" of their "religion". That supplication raises, as we see it, two questions. First, do they bring themselves within the meaning of the word "religion" as used in the Constitution; and second, is there any limitation on the adjective "free" in the constitutional phrase "free exercise"?

Appellant suggests that religion is an objective rather than a subjective matter. He goes on to argue that no one could conceivably appraise non-flag saluting in theological terms. In other words, he applies some sort of average reasonable man standard. We agree that the test is not without subjective limitations. The individual cannot claim any and all beliefs religious. Maybe he should be able to, but the fact is that the Constitution uses a certain word of art and does not employ the wider term "belief". A perfect illustration of this distinction is found in the cases of certain conscientious objectors under the Selective Draft Act of 1917, as amended, 40 Stat. 76, 534, 885, 955 (50 U. S. C. A. p. 165). As is known, most of those who objected to service in war offered religious scruples as an excuse. There were, however, a certain number whose claim for exemption was based simply on disbelief in war as an instrument of human policy. Their claims were disallowed and all of them were sentenced to long terms. See Case, Conscientious Objectors, 4 Ency. of Social Sciences p. 210; Second Report of the Provost Marshal General to the Secretary of War on the Operation of the Selective Service System, pp. 58-59; Third Assistant Secretary of War, Statement as to Treatment of Conscientious Objectors in the Army, September 28, 1918, Secretary of War, Statement as to Treatment of Conscientious Objectors in the Army, June 18, 1919.

As in most phases of the subject, there is not complete agreement on a definition of religion, Hopkins, *The History*

and Fourteenth Amendment, 31 Columbia Law Review 468, Constitutional Law; Liberty of Assembly Under the Fourteenth Amendment, 25 California Law Review 496, The Hague Injunction Proceedings, 48 Yale Law Journal 257.

of Religions; Houf, What Religion Is and Does; Menzies, History of Religion, rev. ed.; Dewey, A Common Faith. Some interesting cases might (and may) arise under the broader conception, as for instance anything within the comprehensive term sacred, see Crawley, who gives the study of religion the wide scope of a comparative hierology. (The Tree of Life, p. 209.) Our courts have promulgated what has been referred to as a "minimum definition". Compare the language of a distinguished writer on the subject with that of Mr. Justice Field speaking for the Supreme Court of the United States:

The religious philosopher says:

"Religion is squaring human life with superhuman life . . . What is common to all religions is belief in a superhuman power and an adjustment of human activities to the requirements of that power, such adjustment as may enable the individual believer to exist more happily".

Hopkins, The History of Religions, p. 2⁵

The legal philosopher says:

"The term religion has reference to one's view of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will".

Davis v. Beason, 133 U. S. 333, 342

By the same token the definition excludes any theory of sensible choice. If the requirement is present, the doctrinal views of the average man or the average official are wholly irrelevant. Professor Zollman speaks as follows:

⁵ See also:

" . . . a propitiation or conciliation of powers superior to man which are believed to direct and control the course of nature and of human life".

Frazer, The Golden Bough, 3rd ed. i. 222

“ ‘Were the administration of the great variety of religious charities with which our country so happily abounds, to depend upon the opinion of the judges, who from time to time succeed each other in the administration of justice, upon the question whether the doctrines intended to be upheld and inculcated by such charities, were consonant to the doctrines of the Bible; we should be entirely at sea, without helm or compass, in this land of unlimited religious toleration’. The law therefore does not presume ‘to settle differences of creeds and confessions, or to say that any point of doctrine is too absurd to be believed’ ”.

Religious Liberty in the Law, Part 2, 17 Michigan Law Review 456, 460-461

This last sentence is from an early (1836) Pennsylvania case; *Schriber v. Rapp*, 5 Watts 351, 363; 30 Am. Dec. 327; See also, 3 Scott on Trusts sec. 371.4.

The group to which the plaintiff-appellees belong comes plainly within the “most minimum” definition. It is the very thoroughness of their belief in the supernatural that has gotten them into trouble. Indeed, they qualify even under the more limited “well-recognized” of the Selective Service Act, 50 U. S. C. A. p. 165. Professor Elmer T. Clark lists them in his book, *The Small Sects In America*, and describes them as follows:

“The most vehement and spectacular, and also the most vigorous propagandists, of all the Adventists are the followers of the late ‘Pastor’ Charles Taze Russell, now known as the International Bible Students’ Association, and sometimes called ‘Jehovah’s Witnesses’. The group is not a denomination, has no churches or ministry, and is not listed by the census; it is, indeed, bitter in its denunciation of all churches, Catholic and Protestant alike. The movement was created and controlled by Russell, who was an uneducated

haberdasher of Allegheny, Pennsylvania, and at his death the mantle fell on the one Judge J. F. Rutherford. . . .

“Russell’s exegesis differs from anything else that ever was on land or sea! He observes no ear as of criticism and arrives at none of the conclusions reached by other students”.

Clark, *The Small Sects in America*, pp. 58-59

See also, Drake, *Who Are Jehovah’s Witnesses*, 53 *Christian Century*, April 15, 1936, p. 567. One might note that the sect does not appear to practice the tolerance that it now asks for these young members of its flock. Incidentally, Professor Clark and the publication *Religious Bodies*, 1926, Vol. 2, Bureau of the Census, United States Department of Commerce, indicate how far from the average religious man’s concept the beliefs of most of these so-called small sects depart.⁶

The noun religion is specific and has therefore what might be called historical and institutional limitations. The adjective free is general and its limitations, if any, must therefore be constitutional and politically scientific. And that is just what they are. We, this court, and finally the United States Supreme Court, *Committee for Industrial Organization v. Hague*, 25 F. Supp. 127, 101 F. (2d) 774, U. S. , June 5, 1939, had recent occasion to consider the word in relation to speech and assembly. Many of the

⁶ *Religious Bodies*, 1926, Vol. 2: *Seventh Day Adventist*, p. 25; *Apostolic Overcoming Holy Church of God*, p. 58; *Two-Seed-in-the-Spirit Predestinarian Baptists*, p. 219; *Dunkers*, p. 226; *Progressive Dunkers*, p. 243; *River Brethren*, p. 286; *United Zion’s Children*, p. 295; *Christadelphians*, p. 306; *Christian Scientists*, p. 354; *Nazarenes*, p. 392; *Amana Society*, p. 439; *Shakers*, p. 443; *Anglicans*, p. 452; *Burning Bush*, p. 569; *Pillar of Fire*, p. 584; *Mormons (Latter Day Saints)*, p. 665; *Mennonite Bodies*, p. 842; *Schwenkfelders*, p. 1309.

considerations there validated apply here and we need not repeat them. There are others that have even greater cogency. They can be summed up thus. A man may die for the right to express his opinion. He has died or suffered worse than death for the right to worship according to his conscience. That is implicit in the definitions of religion we have cited, in the long history of the struggle for religious liberty before the law, and in the utterances of our statesmen. That history and those sayings are undoubtedly taught in this very school at Minersville and are so well-known anyway that we shall only encumber this opinion with a few references and quotations.

The leading authority under the common law of England is, of course, Paterson. He devotes the second division of his work, *Liberty of the Press, Speech and Public Worship*, to an excellent account of the protracted struggle for toleration in Great Britain, *Division of the Law Relating to the Security of Public Worship*. Its successful continuation on the American continent is outlined in Crooker, *The Winning of Religious Liberty*, and the operation of the resultant constitutional mechanism which now governs and safeguards our manifold religious pursuits is carefully chronicled by Professor Zollman in his article, *Religious Liberty in the Law*, above cited. Three wise men of American public life have put into these words the concepts to which that mechanism is geared.⁷

“Religion is a subject on which I have ever been most scrupulously reserved. I have considered it as a matter between every man and his Maker, in which no other, and far less the public; had a right to intermeddle”.

Thomas Jefferson, Letter to Richard Rush in
1813

⁷ These fellow countrymen of ours are only echoing the earlier words of the great 17th Century figures, the statesman and author, Sir William Temple (1628-1699), the philosopher, John Locke (1632-1704), and the 18th Cen-

"The love of religious liberty is a stronger sentiment than an attachment to civil or political freedom. That freedom which the conscience demands, and which men feel bound by their hopes of salvation to contend for, can hardly fail to be attained. Conscience in the cause of religion, and the worship of the Deity, prepares the mind to act and suffer beyond almost all other causes. History instructs us that this love of religious liberty, a compound sentiment in the breast of men, made up of the dearest sense of right and the highest conviction of duty, is able to look the sternest despotism in the face".

Daniel Webster, Speech in commemoration of
the First Settlement of New England,
Plymouth, 1820

"... The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon

ture Cabinet member, Lord William Wyndham Grenville (1759-1834); all of whom embody the same glorious, as we think, conception in the following passages:

"Now, the way to our future happiness has been perpetually disputed throughout the world; and must be left at last to the impressions made upon every man's belief and conscience, either by natural or supernatural means; which impression men may disguise or dissemble, but no man can resist. For belief is no more in man's power than his stature or his features; and he that tells me I must change my opinion for his, because it is the truer and the better—without other arguments that have to me the force of conviction—may as well tell me I must change my gray eyes for others like his that are black, because these are lovelier or more in esteem. . . . Sufficient and conceited men who talk much of right reason and mean always their own, and make their private imagination the measure of general truth".

Temple, *The Right of Private Judgment in Religion*, p. 79

the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in part one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power”.

Mr. Chief Justice Hughes dissenting in *U. S. v. MacIntosh*, 283 U. S. 605, 634

As applied to speech and assembly, we observed and in fact held that free is not absolute and, with pundit Lipp-

“All the life and power of religion consists in the inward persuasion of the mind; and it is impossible for the understanding to be compelled to the belief of anything by the force of the magistrate’s power. . . . Every man has the care of his own eternal happiness, the attainment whereof can neither be facilitated by another man’s industry, nor the loss of it turn to another man’s prejudice, nor the hope of it be forced from him by any external violence”.

Locke, *Letters on Toleration*, p. 111

“It is the inveterate habit of intolerance to impute to the followers of every rival sect opinions which they disclaim, and to deduce from these tenets conclusions which they utterly deny. Justice and charity on the contrary, give to others the same liberty which we claim for ourselves—the liberty to form our opinions by the light of our own reason, to adopt, to investigate, to interpret for ourselves the tenets which we embrace, and to be credited in our exposition of them until our own practice shall have proved its insincerity”.

Lord Grenville, 22 Parl. Deb. 668

mann, wondered if anything is, 124 *Atlantic Monthly*, p. 616. We continue that wonder because here also an even greater urgency for freedom falls before reality. That reality lies in the need for society and so in the needs of society. It is rather interesting to note that in this case the proponents of religious freedom (the greater) are quite willing to concede this; whereas the proponents of free speech (the lesser) were quite unwilling to do so in the Hague case. There may be a distinction in the tendency of religious beliefs to go beyond the contemplations of Confucius into the practices of Brigham Young. This tendency piles up the precedents we discuss later. One might wonder, however, if the practice of rioting is not sometimes as bad as the practice of polygamy.

At any rate the concession that the maxim, "*salus populi suprema lex*" embraces the dictates of conscience was early made and by that great champion of religious liberty, Roger Williams of Rhode Island. Likening the populace to a ship's company, he said:

"Liberty of conscience turns upon these two hinges: 1, that no one be forced to attend the ship's prayers, or prevented from attending prayers of his own; 2, that if either refuse to obey the laws and orders of the vessel concerning its preservation and the common peace, or mutiny, or maintain that there should be no superior, that the commander in such case shall judge, resist, compel and punish such transgressor according to his deserts and merits".

Roger Williams, *Rhode Island Historical Society* 4, p. 241

The law today is as he admitted it must be. Professor Freund, the definitive authority on the subject of "police power" (jurist's argot for *salus populi*), sums it up:

"The constitutional guaranty of religious liberty covers above all the two cardinal points of worship and doctrine, the two forms in which the uncontrollable facts of faith and opinion find their principal outward

expression; it includes secondarily also customs, practices and ceremonies, which even where they do not form directly a part of worship, are prescribed by religion. That this liberty does not altogether supersede the operation of the police power is recognized by the constitutional proviso found in many states that it shall not excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state, a proviso which may be implied where it is not expressed.

. . . . In the United States legislation punishing polygamy was upheld, though the Mormons conscientiously believed that their religion sanctioned and commended the practice. The Supreme Court emphasized the distinction between opinion and precept on the one hand, and practices affecting the social order on the other. Quoting with approval Jefferson's words 'that it is time enough for the rightful purposes of civil government to interfere when principals break out into overt acts against peace and good order'. It held that Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order".

Freund, *Police Power*, p. 497

and another distinguished writer gives his approval:

"Under the modern idea therefore, of intellectual and religious freedom, but at the same time of the paramount authority of the law, we generally and no doubt should generally, place a limit at the overt act and make its legality depend not on its motive but on its direct effect on the public weal. But the maxims 'sic utere tuum ut alieno non laedas', and 'salus populi suprema est lex' are as applicable in religious matters as in secular; and the state is and ever should be jealous of its public policy".

Bruce, *Religious Liberty in the United States*,
74 *Central Law Journal*, 279, 285

We have then to balance the two intangibles *salus* and *religio* and determine to which arm of the scale the weight of our decision must be added. In doing so, under our system of case law, we are entitled, or rather constrained, to examine the precedents, Cardozo, *The Nature Of The Judicial Process*. All of these that are cited in either brief and many more besides are collected in four standard sources, 11 Am. Jur. pp. 1100-1104; *Constitutional Law*, West System Digest, key no. 84; U. S. C. A., *Constitution*, Part 2, pp. 453-456; *Association of American Law Schools Selected Essays on Constitutional Law*, Vol. 2, pp. 1108-1175. Having examined these decided cases, we, again under our system, must search for a *ratio decidendi*, and then include or exclude our own particular set of facts.

As indicated by their decisions, our courts consider that the peace and good order of the community must prevail over conscience, (a) wherever its mental or physical health is affected, (b) wherever a violation of its sense of reverence makes a breach of the peace reasonably foreseeable, and (c) wherever the "defense of the realm" is imperiled. So in the broad category of physical and mental health, we have cases which defer the dictates of individual scruple to the exclusion of obscene literature from the mails, *Knowles v. U. S.*, 170 Fed. 409 the use of obscene language, *Delk v. Commonwealth*, 166 Ky. 39, 178 S. W. 1129; the vaccination, *Vonnegut v. Baum*, 206 Ind. 172, and physical examination of school children, *Streich v. Board of Education*, 34 S. D. 169; the physical examination of prospective brides and grooms, *Peterson v. Widule*, 151 Wis. 641; the medical qualification of physicians (faith healing etc.), *Fealy v. Birmingham*, 73 So. 296 (Ala.); *Post v. U. S.*, 135 Fed. 1022; *People v. Pierson*, 176 N. Y. 201; *State v. Verbon*, 8 Pac. (2) 1083; *State v. Miller*, 229 N. W. 569; the limitation of the amount of sacramental wine consumable under the Prohibition Act, *Shapiro v. Lyle*, 30 F. (2d) 971; the elimination of drug addiction; *State v. Big Sheep*, 243 Pac. (Mont.); the regulation of the exhumation of dead bodies, *In re Wong Yung Quy*,

2 Fed. 624, 632; the preservation of quiet, *State v. White*, 64 N. H. 48 (Salvation Army); *City of Louisiana Bottome*, 300 S. W. 316; the suppression of mail frauds, *New v. U. S.*, 245 Fed. 710, and kindred schemes, *McMasters v. State*, 21 Okla. Crim. Rep. 318 (Spiritualism—exorcisement of evil spirits); *State v. Neitzel*, 69 Wash. 567 (astrology).

Reverence is manifestly something deeper than law. The mere creation by fiat of a particular moral standard would not mean that its violation might reasonably be expected to arouse the passions productive of peace breaches. There are, however, certain "ethics" whether furnished with legal sanctions or not, that do plumb those reaches of our emotions. So in a monogamous civilization polygamy shocks and is forbidden, *Reynolds v. U. S.*, 98 U. S. 145, 163; *Davis v. Béason*, 133 U. S. 333, 342; *Church of Jesus Christ of the Latter Day Saints v. U. S.*, 136 U. S. 1, 49, and see also, Warren, *The Supreme Court in United States History* p. 419. In a deistic civilization blasphemy shocks and is forbidden, *State v. Mockus*, 120 Me. 84, 113 A. 39; *State v. Chandler*, 2 Del. (2 Har.) 553; *Commonwealth v. Kneeland*, 37 Mass. 206; *People v. Ruggles*, 8 Johns. 290 (N. Y.); *Updegrath v. Commonwealth*, 11 S. & R. 394 (Pa.). In a Christian civilization disrespect for the Sabbath shocks and is forbidden, *State v. Blair*, 288 Pac. 729; *Elliott v. State*, 242 Pac. 340; *Shover v. State*, 10 Ark. 259, 263; *State v. Bott*, 31 La. Ann. 663, 665; *Lindenmueller v. People*, 33 Bar. 548, 560; *State v. Barnes*, 22 N. D. 18, 132 N. W. 215; *Sparhawk v. Union Pacific Ry. Co.*, 54 Pa. 401, 406. It might be noted that the cases on these last seem to take an unduly sectarian position and further that the observance of Sunday is now generally placed on the basis of health, *State v. Petit*, 177 U. S. 164; *Zollman*, *Religious Liberty in the Law*, 17 Michigan Law Review 355, 373.

So far we have been talking more about salus in the sense of welfare among the citizens of a community. Clearly that presupposes a country and therefore presupposes until the millennium at least, its defense. Because, however, of

what might be termed thinking wishful for that very millenium, we find the conflict of conscience over "bearing arms" one of the saddest in this rather sad field. Professor Lecky, in his famous *History of European Morals*, traces the beginnings of this struggle. (Vol. 2, p. 149.) Public opinion, at least in the common law democracies, has taken cognizance of this conflict between scruple and safety, 5-6 Geo. V, ch. 104, secs. 2 (1) and (3); Statutes of Canada, 7-8 Geo. V, ch. 19, sec. 11 (1) f. From the inception of the Republic religious objectors have been expressly or impliedly exempt from military service. *Annals of Congress*, Thirteenth Congress, Third Session, Vol. 3, pp. 774, 775; Selective Draft Act, above cited; 32 U. S. C. A. sec. 3, and see *U. S. v. Macintosh*, 263 U. S. 605, 627, et seq.; *Macintosh v. U. S.*, 42 F. (2d) 845; 26 *Illinois Law Review* 375; 30 *Michigan Law Review* 133; 11 *Boston University Law Review* 532; 80 *University of Pennsylvania Law Review* 275. These salutary laws made the constitutional issue of rare occurrence. Whenever it is presented, the decision, as it must, has been in favor of self-preservation, *U. S. v. Macintosh*, above cited, and see *U. S. v. Schwimmer*, 279 U. S. 644; *Hamilton v. The Regents, etc.*, 293 U. S. 245.

We have not included in our classification of authorities those bearing on the issue of the case at bar. They are numerous, see Appendix 1, but they stand or fall by our own rightness as finally determined. We may say hardly a kind word about any of them appears in the legal periodicals, see Appendix 2. Further, there are no binding precedents among them, see Appendix 3.

We have set forth the cases. What does an analysis show to be their ratio decidendi? Does compulsory flag saluting come within it? In making our analysis we must keep constantly in mind what we have on those scales which must come down on one side or the other. A framework of government presupposes its own welfare and our particular framework prescribes religious liberty. Under certain

circumstances the two may be mutually exclusive. The necessity for any choice between conscience and country is tragic. It must be made. *Salus* is a material conception. The injury is to the body and not the soul of the body politic. This eliminates the gentler aspects of love of country. A compulsory voting law, Merriam and Gosnell, *Non-Voting, Its Causes and Methods of Control* (1924), might well yield to scruples. On the other hand the state's existence has material foundations other than the martial one. Conscience could scarcely be added to the reasons for tax avoidance. But until wars and rumors of wars cease to trouble, bearing arms must be the means of safety and as such means it must depend on the collective, however determined (cf. war referendum proposals), and not the individual ("my country right or wrong") will.

All but two classes of the cases are in negative form. In most of them, the religious objector is prohibited from propitiating the Deity in a certain way; he is not forced to commit a sacrilege. For instance, the Mormon is not damned for monogamy, the astrologist or spiritualist for personally consulting the stars or the spirits, or the Salvationists for using the soft pedal. The character of the field of health, of arms, and of the case at bar requires compulsion rather than prohibition. In the last named, the inoculation is against a spiritual indifference or disloyalty to country instead of a physical disease.

Cicero inversely describes the disease in his famous definition of patriotism. To that definition, we most humbly subscribe:

"Cari sunt parentes, cari liberi, propinqui; familiares; sed omnes omnium caritates patria una complexa est; pro qua quis bonus dubitet mortem oppetere si ei sit profuturus?"

Cicero, *De Officiis*, 1, 17

A modern writer on ethics classifies this same abstraction under the head of Benevolence in his discussion of Intui-

tionism, Sidgwick, *The Methods of Ethics*, p. 251. But is the disease so dangerous that it comes within the "clear and present" of the surely analogous free speech cases, *Schenck v. U. S.*, 249 U. S. 47; *Frohwerk v. U. S.*, 249 U. S. 204; *Debs v. U. S.* 249 U. S. 211; *Abrams v. U. S.*, 250 U. S. 616; *Schaefer v. U. S.*, 251 U. S. 466; *Pierce v. U. S.*, 252 U. S. 239; *O'Connel v. U. S.*, 253 U. S. 142; *Gilbert v. Minnesota*, 254 U. S. 325; *Whitney v. California*, 274 U. S. 357; *Stromberg v. California*, 283 U. S. 359; *Herndon v. Lowry*, 301 U. S. 242. Love of country in its relation to the armed forces thereof may have either a positive or a negative effect. It may prevent treachery and it may promote courage. There are plainly many more certain, if less pleasant, methods of providing against that extreme of disloyalty which is treachery. So, also there are many equally certain, if less noble, methods of meeting to the martial zeal which is bravery on the field of battle. If all armies had to be volunteer, it might be otherwise. As it is, considerations of prestige in both its positive (promotions, decorations, etc.) and negative (fear of ridicule etc.) facets operate and make the disease only para at most. After all, even mercenary troops used to win wars: a fortiori, is the remoteness of the sock-knitting and nursing abilities of grown-up girls. See *U. S. v. Bland*, 283 U. S. 636; *U. S. v. Schwimmer*, above cited. We conclude that patriotism is an added advantage rather than an essential whose absence is dangerous in the clear and present sense.

An even more "clear, cogent and convincing," as the books say, argument follows from the type of vaccine used. That it must be reasonably effective is both a sensible and recognized canon of police power, *Jacobson v. Mass.*, 197 U. S. 11. The punishment of polygamy, drum beating, blasphemy, and faith healing is indispensable to accomplish their prohibition. So, too, the prevention of epidemics requires vaccination. Is the same thing true of compulsory flag saluting? We can concede the general connection between the emblem and the virtue. In the words of a learned Japanese patriot:

“ . . . Any nation which makes light of the flag must necessarily sink. Disrespect to the flag evinces a state policy pliable and submissive”.

M. Matsunami, *The National Flag of Japan*,
p. 6

Does the conception embrace the next step? The abstract problem postulated concerns the effectiveness of teaching love (of country) by force emanating from the would-be beloved (an administrative instrumentality of that country). We do not doubt that children can and have been forced to learn Latin or eat spinach and so eventually to love them. But this pedagogical victory has more often than not been won at the price of resentment towards the disciplinarian. In our particular circumstance, then, that resentment clashes with and cancels the very affection sought to be instilled. In recognition of this logical absurdity, we find students of educational psychology against over-emphasis of the flag salute. They say:

“An objective appraisal of formulas frequently proposed reveals that many are concerned not with patriotism but with traditional or popular means of expressing it. One becomes loyal by swearing his allegiance or saluting the flag, singing the national anthem or celebrating a national holiday, venerating the makers of the organic law or worshipping those who now interpret it. . . .

“If American schools are to develop a creative citizenship, they must do more than train the next generation in matters which should be routine and voluntary. These means of expressing patriotism upon which some leaders would place emphasis are employed in dictatorships as well as in democracies. Loyalty in our republic must have its origin in concepts which are an integral part of the national philosophy itself”.

Campbell, *In Quest of Patriotism*, *The Nation's Schools*, September, 1938, p. 42

" . . . The noble sentiment of patriotism is worn threadbare not only in our movie houses but also in many schools. There are schools all over the United States in which the pupils have to go through the ceremony of pledging allegiance to the flag every school day. It would be hard to devise a means more effective for dulling patriotic sentiment than that. This routine repetition makes the flag-saluting ceremony perfunctory and so devoid of feeling; and once this feeling has been lost it is hard to recapture it for the 'high moments' of life.

"Furthermore, needless compulsory routine tends to set up in some minds an antagonistic attitude. This becomes associated with the ceremony itself and because it is automatic in response the person concerned can not later easily dissociate the two, even though he is intellectually convinced that the two need not go together".

W. C. Ruediger, The George Washington University, 49 Schools and Society, February 25, 1939, p. 249

Some sensing of which may have led the school superintendent of Minersville to admit in his testimony that flag saluting, although an appropriate one, is not the only method of teaching loyalty (R. p. 98). The salute, therefore, unlike the other exercises of the police power, negative and positive, which we have mentioned, is of at least doubtful efficacy and, as applied to appellees; plainly lacking in necessity. See Appendix 4.

A fourth and last distinction exists in the age of the target. In all but the medical cases the victims are adults. It is elementary to recognize disability of infants with respect to their contracts, torts, and to some extent crimes, 31 C. J. pp. 1058-1112. The cardinal ethical principle of this legal phenomenon is implicit in the very statutes by

virtue of which the appellant performs its function. It is told:

“ . . . No cruel experiment on any living creature shall be permitted in any public school of this Commonwealth”.

24 Purdon's Pa. Stat. Ann. sec. 1554

Here, nevertheless, that disability is not only not recognized, but is exploited. Children are faced with the alternative of conforming to their parents' view of religion or foregoing the privilege of education. That is true, of course, in the medical cases. There again, however, we are saved by the logic of the clear and present danger test. Little children with smallpox are as infectious as their elders.

To summarize our analysis: compulsory flag saluting is designed to better secure the state by inculcating in its youthful citizens a love of country that will incline their hearts and minds to its more willing defense. That particular compulsion happens to be abhorrent to the particular love of God of the little girl and boy now seeking our protection. One conception or the other must yield. Which is required by our Constitution? We think the material and not the spiritual.

Compulsion rather than protection should be sparingly exercised. Harm usually comes from doing rather than leaving undone, and refraining is generally not sacrilege. We do not find the essential relationship between infant patriotism and the martial spirit. That essence we have borrowed from the settled law of another and cognate part of this same provision of the Bill of Rights. Departure from a recently evolved ritualistic norm of patriotism is not clear and present assurance of future cowardice or treachery. And that is especially so, where compulsory adherence to that norm is neither logically consistent with, nor pedagogically indispensable to, the dissemination of

loyalty. Equally important, we think, is the School Board's mistake in the domain where they are not supposed to make mistakes. They misunderstand and therefore misapply a fundamental of education. Children, as well as "birds and animals", 24 Purdon's Pa. Stat. Ann. sec. 1551, are entitled to the benefits of humane treatment.

We conclude with two examples from the history of the "small sects" of Pennsylvania's early days. The state was colonized and founded by William Penn. He came to the new country because his refusal to subordinate religious scruples to educational coercion led to his expulsion from Oxford University in the old. Document by John Aubrey (now in the Bodleian Library).

George Washington, the almost universal character of whose wisdom always freshly surprises, a century later wrote a letter to the descendants of those whom William Penn brought with him. In it General Washington said:

"Government being, among other purposes, instituted to protect the persons and consciences of men from oppression it certainly is the duty of rulers, not only to abstain from it themselves, but according to their stations to prevent it in others.

"I assure you very explicitly, that in my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard to the protection and essential interests of the nation may justify and permit":

Writings of George Washington (Sparks Ed.
Vol. 12, pp. 168-169), Letter to the Religious
Society Called Quakers, October, 1789

The appellant School Board has failed to "treat the conscientious scruples" of all children with that "great delicacy and tenderness". We agree with the father of our

country that they should and we concur with the learned District Court in saying that they must.

The decree of the District Court is affirmed.

A true Copy:

Teste:

*Clerk of the United States Circuit Court of Appeals
for the Third Circuit.*

APPENDIX.

1. Appellants' position is ostensibly sustained by *Hering v. State Board of Education*, 189 Atl. 629 (N. J.), affirmed per curiam, 194 Atl. 177, appeal dismissed, 303 U. S. 624; *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2) 577 (Mass.); *Leoles v. Landers*, 192 S. E. 218 (Ga.), appeal dismissed, 302 U. S. 656; *Gabrielli v. Knickerbocker*, 74 Pac. (2) 290 (Cal.), reversed, 82 Pac. (2) 391, appeal dismissed and certiorari denied, 83 L. Ed. 765; *Johnson v. Town of Deerfield*, 25 F. Supp. 918 (Mass.), affirmed 83 L. Ed. 765; *People v. Sandstrom*, 279 N. Y. 523, and see *Shinn v. Barrow*, 121 S. W. (2) 450 (Tex.).

We exclude from our citation the many adjudications dealing with compulsory bible reading in public schools. These, though factually related to our circumstance, are in irreconcilable conflict with one another and seem in the last analysis to turn upon a nice construction of state constitutional provisions regarding primarily the establishment rather than the free exercise of religion. See 34 *Michigan Law Review* 1237; 28 *Michigan Law Review* 431; 16 *Virginia Law Review* 509.

2. Judicial condonation of the flag salute in our circumstances has been condemned in 51 *Harvard Law Review* 1418; 23 *Minnesota Law Review* 247; 27 *Georgetown Law Journal* 231; 18 *Oregon Law Review* 127; 23 *Iowa Law Review* 424; 2 *University of Pittsburgh Law Review* 206; 5 *University of Pittsburgh Law Review* 86; 86 *University of Pennsylvania Law Review* 431; 12 *Temple Law Quarterly* 513; 23 *Cornell Law Quarterly* 582; and see, Gardner and Post, *The Constitutional Questions Raised by the Flag Salute and Teachers' Oath Acts in Massachusetts*, 16 *Boston University Law Review* 802; Clark, *The Limits of Free Expression*, 73 *United States Law Review*, 392, 399. Compare 36 *Michigan Law Review* 465; 6 *Kansas City Law*

Review 217. Many of these law notes give unstinted and, as we think, deserving praise to the opinions of the learned court below, *Gobitis v. Minersville School District*, 21 F. Supp. 581; 24 F. Supp. 271.

3. Four cases bear the per curiam imprimatur of the Supreme Court. Three of these, however, *Hering v. State Board of Education*, *Looles v. Landers*, and *Johnson v. Town of Deerfield*, above cited, deal with a circumstance entirely distinct from the case at bar. In each of them, both the state legislature declared, and the highest state court affirmed, a policy of flag saluting. By reason of this legislative and judicial determination, the connection between an omission to salute the flag and the commission of an injury to the public weal, becomes legally and factually closer, *Ginlow v. New York*, 268 U. S. 652, and see, *Brown*, *Due Process of Law, Police Power and the Supreme Court*, 40 *Harvard Law Review* 943. But here there is no such declaration or affirmance of policy. The legislature of Pennsylvania has gone no further than to prescribe the teaching of civics. The fourth case, *Gabrielli v. Knickerbocker*, above cited, involves as here, a regulation, but one which had been sustained by the highest court of California. However, the Supreme Court dismissed the appeal therefrom merely for want of jurisdiction under 28 U. S. C. A. sec. 344 (1) and denied certiorari under 28 U. S. C. A. sec. 344 (3). By the same token the jurisdictional issue has now been settled in favor of exercise, *Hague v. Committee for Industrial Organization*, U. S. , June 5, 1939, above cited.

Hamilton v. The Regents (the land grant college case), 293 U. S. 245, often cited, is, we think, distinguishable. There a religious objector was expelled from a state university on his refusal to participate in military instruction (originally commanded by the Congress). The decision turned inter alia upon the fact that since the state did not draft students to attend the university it did not coerce the objector in the exercise of his religion, cf. *The Civil*

Rights Cases, 109 U. S. 148. Here, of course, there is such coercion. The statutes call for compulsory attendance, 24 Purdon's Pa. Stat. Ann. sec. 1421, and the functioning of truant officers who have full police power to arrest without warrant any child who fails to attend or is incorrigible, insubordinate, or disorderly, 24 Purdon's Pa. Stat. Ann. sec. 1471. Thus if the offending child is too poor to purchase private education it may well end in reform school, 11 Purdon's Pa. Stat. Ann. sec. 243 (4) (c), sec. 250 (d), cf. Clark, *The Limits of Free Expression*, 73 *United States Law Review*, 392, 399, et seq., and its parents in jail, 24 Purdon's Pa. Stat. Ann. sec. 1430, and see 2 *University of Pittsburgh Law Review* 206, above cited. Furthermore, under constitutions worded as in Pennsylvania, 1 *Vale's Pennsylvania Digest*, p. 421, a child's right to primary (school) as distinguished from secondary (college) education is capable of enforcement at law. *State v. Wilson*, 297 S. W. 419, *Bishop v. Hous*, 35 S. W. 246, *Newman v. Schlach*, 50 *Pac.* (2) 36, *Valentine v. Independent School District*, 183 N. W. 434, *People ex rel. Cisco v. School Board*, 161 N. Y. 598.

4. The record before us sheds but little light upon the problems in educational psychology here discussed. Nor do the briefs direct us to any authorities on the subject. Compare *Mueller v. Oregon*, 208 U. S. 412. To decide questions of reasonableness in the absence of undisputed factual proof or knowledge is of course open to criticism. As has been aptly observed:

" . . . these underlying questions of fact, which condition the constitutionality of the legislation, are at times questions on which the layman feels justified in forming his own opinion and in declining to yield it to that of the judge, at least when the judge bases his determination, not on evidence produced in the case before him, but on his general information,—the same foundation upon which the layman builds his conclu-

sion. As an example, the layman may be quite ready to defer to the opinion of the court when the decision requires a definition of the legal significance of the phrase '*ex post facto law*;' but when the court decides that a law limiting the hours that people may work in bakeshops has no substantial relation to the promotion of the public health, he is inclined to doubt the finality of this finding, since he knows of no particular reason for supposing that the judges are better able to decide such a question than other intelligent persons, unless their determination is based upon evidence produced, before them in the usual way carefully weighed and considered".

Bikle, Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action, 38 Harvard Law Review 6, 7

See also, The Consideration of Facts in "Due Process" Cases, 30 Columbia Law Review 360 (comment). We feel, however, that this criticism cannot reach the instant case. The matter here can hardly be reduced to statistics. It is rather one of logical conjecture and comparison with the pattern of decided cases, based, furthermore, upon the learned trial judge's special finding of the fact of unreasonableness.

ORDER AFFIRMING DECREE.

(Filed November 10, 1939.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 6862. October Term, 1938.

Minersville School District, Board of Education of Minersville School District, etc.,

Defendants-Appellants,

v.

Walter Gobitis, Individually, and Lillian Gobitis, and William Gobitis, Minors, by Walter Gobitis, Their Next Friend,

Plaintiffs-Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia,
November 10, 1939.

WILLIAM CLARK,
Circuit Judge.

(Endorsements: Order Affirming Decree. Received and Filed November 10, 1939, Wm. P. Rowland, Clerk.)

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA, } *Sct.*
THIRD JUDICIAL CIRCUIT,

I, WILLIAM P. ROWLAND, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record and Proceedings in this Court in the case of Minersville School District, Board of Education of Minersville School District, etc., Defendants-Appellants, v. Walter Gobitis, Individually, and Lillian Gobitis and William Gobitis, Minors, by Walter Gobitis, Their Next Friend, Plaintiffs-Appellees, No. 6862, on file, and now remaining among the records of the said court, in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-first day of November, in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the United States the one hundred and sixty-fourth.

(Seal)

WM. P. ROWLAND,
*Clerk of the United States Circuit
Court of Appeals, Third Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 4, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6926)

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IN THE

Supreme Court of the United States

October Term, 1939.

No. 690.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT,
Consisting of DAVID I. JONES, DR. E. A. VALIBUS,
CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS
B. EVANS and WILLIAM ZAPP, and CHARLES E.
ROUDABUSH, Superintendent of MINERSVILLE
PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS
and WILLIAM GOBITIS, Minors, by WALTER
GOBITIS, Their Next Friend,

Respondents.

**Petition for Writ of Certiorari and Brief in
Support Thereof.**

✓ JOSEPH W. HENDERSON,
✓ THOMAS F. MOUNT,
✓ GEORGE M. BRODHEAD, JR.,

Attorneys for Petitioners.

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IN THE
Supreme Court of the United States.

No. October Term, 1939.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS B. EVANS AND WILLIAM ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

The petitioners, Minersville School District, Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools, pray that a writ of certiorari be issued to review a final decree of the United States Circuit Court of Appeals for the Third Circuit entered on November 10, 1939, (R. 182) which decree affirmed a final decree of the District Court of the United States for the Eastern District of Pennsylvania restraining the petitioners from enforcing an order expelling William Gobitis and Lillian Gobitis, minors, from the Minersville Public Schools (R. 128).

SUMMARY AND STATEMENT OF MATTER INVOLVED.

The Board of Education of the Minersville School District, Schuylkill County, Pennsylvania, conducting the Minersville Public Schools, adopted a resolution requiring teachers and pupils to salute the national flag at daily exercises and providing that a refusal to salute the flag be regarded as an act of insubordination (R. 45, 121).

At the opening of school exercises, the teachers and pupils of Minersville Public Schools place their right hands on their breasts and speak the following words:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

In 1935 Lillian Gobitis, aged twelve, and William Gobitis, aged ten, (R. 77) were pupils at the Minersville Public School. They are members of Jehovah's Witnesses and, as such, had covenanted to obey Jehovah's commandments, believing that a failure to obey the precepts in the Bible will result in their eternal destruction (R. 122). The Gobitis children refused to salute the national flag as required by the Minersville Public Schools at its daily school exercises because they believed so to do was contrary to the law of God as set forth in Chapter 20 of Exodus (R. 122).

The School Board regarded said refusal as an act of insubordination and on November 6, 1935 Lillian Gobitis and William Gobitis were expelled from the Minersville Public Schools solely for their refusal to salute the national

flag at the daily exercises of the school (R. 46, 47, 122, 123). Since their expulsion, they have been unable to attend the Minersville public schools (R. 47, 123).

JURISDICTION.

The final decree of the United States Circuit Court of Appeals for the Third Circuit was entered November 10, 1939, (R. 182).

The jurisdiction of this Court to review such proceedings on a writ of certiorari is provided by Section 240 (a), of Judicial Code as amended by the Act of February 13, 1925 c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a)).

The Circuit Court of Appeals has decided an important question of constitutional law in conflict with decisions of your Honorable Court and in conflict with decisions of state courts which decisions are hereinafter specifically set forth under "Reasons for Granting Petition."

OPINIONS BELOW.

On December 1, 1937, an opinion was filed by the Honorable Albert B. Maris, (R. 15) sur Defendants' Motion to Dismiss Bill of Complaint and is reported in 21 F. Supp. 581. The opinion of the Honorable Albert B. Maris sur Pleadings and Proof was filed on June 18, 1938 (R. 120) and is reported in 24 F. Supp. 271. The opinion of the United States Circuit Court of Appeals for the Third Circuit written by Circuit Judge Clark and concurred in by Circuit Judge Biggs and District Judge Kalodner (R. 155), was filed on November 10, 1939, and is unreported.

QUESTIONS PRESENTED.

1. The Board of Education of Minersville School District adopted a resolution requiring teachers and pupils to salute the national flag at daily school exercises and pro-

viding that a refusal be regarded as an act of insubordination. The minor-respondents, members of a sect called Jehovah's Witnesses, while pupils at said schools, refused to salute the flag believing that to do so would violate the written law of Almighty God. Was the expulsion of the minor-respondents for the refusal to salute the flag in violation of any of their rights under the Constitutions of the United States of America and of the Commonwealth of Pennsylvania?

2. Is the refusal of pupils to salute the national flag at a daily exercise of a public school because they believe to do so would violate the written law of Almighty God and result in their eternal destruction founded on a religious belief?


REASONS FOR GRANTING PETITION.

1. The petition should be granted because the United States Circuit Court of Appeals for the Third Circuit has decided an important question of constitutional law concerning freedom of religion which is in conflict with prior decisions of your Honorable Court. *Hamilton v. Regents*, 293 U. S. 245; *Coale v. Pearson*, 290 U. S. 597; *Leoles v. Landers*, 302 U. S. 656; *Hering v. State Board of Education*, 303 U. S. 624; *Johnson v. Town of Deerfield*, 306 U. S. 621; *Gabrielli v. Knickerbocker*, 306 U. S. 621.

2. The decision of the Court below is also in conflict with decisions of state courts dealing with the identical question. *Nicholls v. Mayor and School Committee of Lynn*, — Mass. —, 7 N. E. (2d) 577; *People v. Sandstrom*, 279 N. Y. 523, 18 N. E. (2d) 840; *Leoles v. Landers*, 184 Ga. 580, 192 S. E. 218; *Hering v. State Board of Education*, 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629; *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 391;

Estep v. School Dist. of Borough of Canonsburg, unreported but docketed in Court of Common Pleas of Washington County, State of Pennsylvania, as of May Term, 1936, No. 51.

3. The determination of the questions presented is of utmost importance to all citizens of the United States and is of especial significance to legislative bodies and school boards in their programs for training citizens in civics and loyalty and for strengthening the morale of the country.

Respectfully submitted, 

MINERSVILLE SCHOOL DISTRICT, BOARD OF
EDUCATION OF MINERSVILLE SCHOOL
DISTRICT, Consisting of DAVID I.
JONES, DR. E. A. VALIBUS, CLAUDE L.
PRICE, DR. T. J. MCGURL, THOMAS B.
EVANS and WILLIAM ZAPP, and
CHARLES E. ROUDABUSH, Superin-
tendent of MINERSVILLE PUBLIC
SCHOOLS

By JOSEPH W. HENDERSON,

Of Counsel

Petition for Writ of Certiorari.

STATE OF PENNSYLVANIA, } ss.:
COUNTY OF PHILADELPHIA, }

JOSEPH W. HENDERSON, being duly sworn according to law, deposes and says that he is counsel for the petitioners herein and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

JOSEPH W. HENDERSON.

Sworn to and subscribed before me this thirtieth day of January, A. D. 1940.

HOWARD T. LONG,

(Seal)

Notary Public.

(Phila. Co., Pa.) My commission expires April 4, 1941.

I hereby certify that I have examined the foregoing Petition and that in my opinion it is well-founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

JOSEPH W. HENDERSON,

Counsel for Petitioners.

IN THE
SUPREME COURT OF THE UNITED STATES.

No. October Term, 1939.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS B. EVANS AND WILLIAM ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Respondents.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

For Opinions Below, Jurisdiction, Statement of the Case, and Questions Presented see pages 2 to 4 of the Petition.

**I. THE EXPULSION OF THE GOBITIS CHILDREN
DID NOT VIOLATE ANY RIGHT UNDER STATE
OR FEDERAL CONSTITUTIONS.**

The School Code of the State of Pennsylvania provides that all public schools and private schools in that state shall

teach certain enumerated subjects including "the history of the United States and of Pennsylvania; civics, including loyalty to the State and National Government." Act of May 18, 1911, P. L. 309, Art. XVI, § 1607 as amended by the Act of May 29, 1931, P. L. 243, § 37, and Act of May 20, 1937, P. L. 732 (24 P. S. § 1551) (*Italics ours*).

The resolution, which required teachers and pupils of the Minersville Public Schools to salute the national flag as part of the daily school exercises and provided that a refusal to salute be regarded as an act of insubordination, represents one of the ways of teaching "civics" and "loyalty to the State and National Government". Under the School Code, school boards have the authority to enforce their regulations and to suspend or expel a pupil for misconduct or disobedience. Act of May 18, 1911, P. L. 309, Art. IV, § 404, as amended by the Act of May 29, 1931, P. L. 243, § 9 (24 P. S. § 338) and Act of May 18, 1911, P. L. 309, Art. XIV, § 1411 (24 P. S. § 1383).

The adoption of this resolution and the subsequent expulsion of the Gobitis children for their refusal to salute the national flag was within the power of the school board.

(a) **The enforcement of this resolution did not violate any right of the respondents under the United States Constitution.**

Appeals have been dismissed by your Honorable Court for want of a substantial federal question in cases where the courts of last resort in the States of Georgia and New Jersey held that flag-salute requirements were reasonable and constitutional. *Leoles v. Landers*, 302 U. S. 656 (1937); *Hering v. State Board of Education*, 303 U. S. 624 (1938).

Subsequent to these decisions the Supreme Court of California held that a regulation requiring pupils to salute

the flag was constitutional, *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 391 (1938), and on motion of the appellees your Honorable Court dismissed an appeal from said decision for want of jurisdiction. Moreover, in dismissing said appeal, your Court, "treating the papers whereon the appeal was allowed as a Petition for writ of certiorari," also denied certiorari. *Gabrielli v. Knickerbocker*, 306 U. S. 621 (1939).

In *Johnson v. Deerfield*, 25 F. Supp. 918 (1939) the District Court of the United States for the District of Massachusetts dismissed a bill to declare a statute and similar resolution unconstitutional and your Honorable Court, on direct appeal, affirmed the judgment of the Court below. *Johnson v. Deerfield*, 306 U. S. 621 (1939).

Prior to the decisions of your Honorable Court in the four above mentioned "flag cases", your Honorable Court had held that minor-plaintiffs who had been suspended from the University of California because they refused for alleged religious reasons to take a required course in military training could not compel the regents of the university to reinstate them as students without their taking the prescribed courses in military training. *Hamilton v. Regents*, 293 U. S. 245 (1934). In *Coale v. Pearson*, 165 Md. 224, 167 Atl. 54 (1933) the Court of Appeals of Maryland had also held that a university might suspend students refusing to take regular courses in military training even though the refusal was based on sincere and conscientious religious objections, and your Honorable Court in *Coale v. Pearson*, 290 U. S. 597 (1933), dismissed an appeal from said state decision for want of a substantial federal question.

- (b) The expulsion of the Gobitis children did not violate any right of respondents under the Pennsylvania Constitution.**

The only decision by a court of the Commonwealth of Pennsylvania in which this precise question has been presented is the unreported case of *Estep v. School District of the Borough of Canonsburg et al.*, docketed in the Court of Common Pleas of Washington County, as of May Term 1936, No. 51. In that case the expulsion of a minor-plaintiff from a public school because he had refused to salute the flag was upheld and the plaintiff's writ of alternative mandamus was quashed. No appeal was taken from this decision.

However, the appellate courts of Pennsylvania have held other analogous statutes, ordinances, rules and regulations constitutional. See *Commonwealth v. Herr*, 229 Pa. 132, 78 Atl. 68 (1910), and the cases cited therein.

- (c) The decision in this case is also in conflict with decisions of state courts of last resort upholding similar requirements to salute the flag.**

The courts of last resort of the States of New York and Massachusetts, as well as of Georgia, New Jersey, and California, have also sustained the expulsion of members of Jehovah's Witnesses from public schools for refusal to salute the national flag at school exercises. *People v. Sandstrom*, 279 N. Y. 523, 18 N. E. (2d) 840 (1939); *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577 (Mass. 1937); *Leoles v. Landers*, 184 Ga. 580, 192 S. E. 218 (1937); *Hering v. State Board of Education*, 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629 (1937); *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 591 (1938).

We submit that the Courts-below failed to distinguish the present controversy from those four cases in which your Honorable Court dismissed appeals and that the Courts-below also disregarded the decisions of those state courts which had theretofore considered the precise question presented in this case.

It makes no difference whether saluting the national flag be required by a statute of a state legislature or by an ordinance or regulation of a duly authorized municipal subdivision of the state. The fundamental question is the same in each case. The fact that the Supreme Court of Pennsylvania has not considered this precise question while the highest courts in other states did pass upon similar statutes or regulations in the above discussed cases has no bearing on this case. The respondents themselves chose the Federal Court as the forum in which to have this controversy determined, and opposed a motion to dismiss the bill for want of jurisdiction. If they chose, they could have instituted proceedings in a state court and have had the Supreme Court of Pennsylvania adjudicate this precise question.

II. THE REFUSAL OF PUPILS TO SALUTE THE NATIONAL FLAG AT SCHOOL EXERCISES BECAUSE THEY BELIEVE TO DO SO WOULD VIOLATE THE WRITTEN LAW OF ALMIGHTY GOD IS NOT FOUNDED ON A RELIGIOUS BELIEF.

Teachers and pupils of Minersville Public Schools under the resolution of the Board of Education are required at the opening of school exercises to place their right hands on their breasts and speak the following words:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it

stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

Members of Jehovah's Witnesses, having covenanted to obey Jehovah's commandments, believe that a failure to obey the same will result in their eternal destruction (R. 122).

However, as we understand this exercise, the act of saluting the national flag at the daily school exercises in no way concerns the religious beliefs of a pupil. While a member of Jehovah's Witnesses may mistakenly believe that saluting the flag contravenes the law of God as set forth in the 20th chapter of Exodus, it does not follow that said pupil's refusal to salute the flag is based on a religious belief.

The act of saluting the national flag "is a ceremony clearly designed to inculcate patriotism," *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577, 579 (Mass. 1937).

"The salute and pledge do not go beyond that which, according to generally recognized principles, is due to government. There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance. It does not in any reasonable sense hurt, molest, or restrain a human being in respect to 'worshipping God' within the meaning of words in the Constitution. The rule and statute are well within the competency of legislative authority. They exact nothing in opposition to religion. They are directed to a justifiable end in the conduct of education in public schools." *Nicholls v. Mayor and School Committee of Lynn*, *supra*, at page 580.

When pupils are saluting the national flag, they are not bowing down in worship of an image in place of Jehovah. The salute is merely an act by which the pupils may show their respect for the government "similar to rising to a standing position upon hearing the National Anthem being played." *Leoles v. Lander*, 184 Ga. 580, 587, 192 S. E. 218, 222 (1937). Neither act could be denominated as a religious rite.

There is nothing in saluting our flag which approaches any religious observance. No religious word whatsoever is uttered in the pledge which only excites patriotic fervor and loyalty. The saluting of the flag is no more than an acknowledgment of the *temporal* sovereignty of this nation and has nothing whatsoever to do with a person's religious feelings and is in no way an acknowledgment of the *spiritual* sovereignty which the members of Jehovah's Witnesses ascribe to Jehovah God. The salute imposes no obligations whatsoever affecting religious worship and does not in any way concern the views which anyone may have concerning his Creator or concerning his relation to his Maker.

As stated in *People v. Sandstrom*, 279 N. Y. 523, 529, 18 N. E. (2d) 840, 842 (1939):

"Saluting the flag in no sense is an act of worship or a species of idolatry, nor does it constitute any approach to a religious observance. The flag has nothing to do with religion, and in all the history of this country it has stood for just the contrary, namely, the principle that people may worship as they please or need not worship at all."

CONCLUSION.

We submit that the decision by the Court below in this case is in conflict with prior decisions of your Honorable

Court, as well as in conflict with decisions of state courts dealing with the same question, and that the Gobitis children were legally expelled from the public schools at Minersville for their refusal to salute the national flag.

The petitioners' prayer for writ of certiorari should therefore be granted.

Respectfully submitted,

JOSEPH W. HENDERSON,

THOMAS F. MOUNT,

GEORGE M. BRODHEAD, JR.,

Attorneys for Petitioners.

Philadelphia, Pennsylvania

January 30, 1940

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1939.

No. 690.

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, Consisting of DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, THOMAS B. EVANS and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, Superintendent of MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS and WILLIAM GOBITIS, Minors, by WALTER GOBITIS, Their Next Friend,

Respondents.

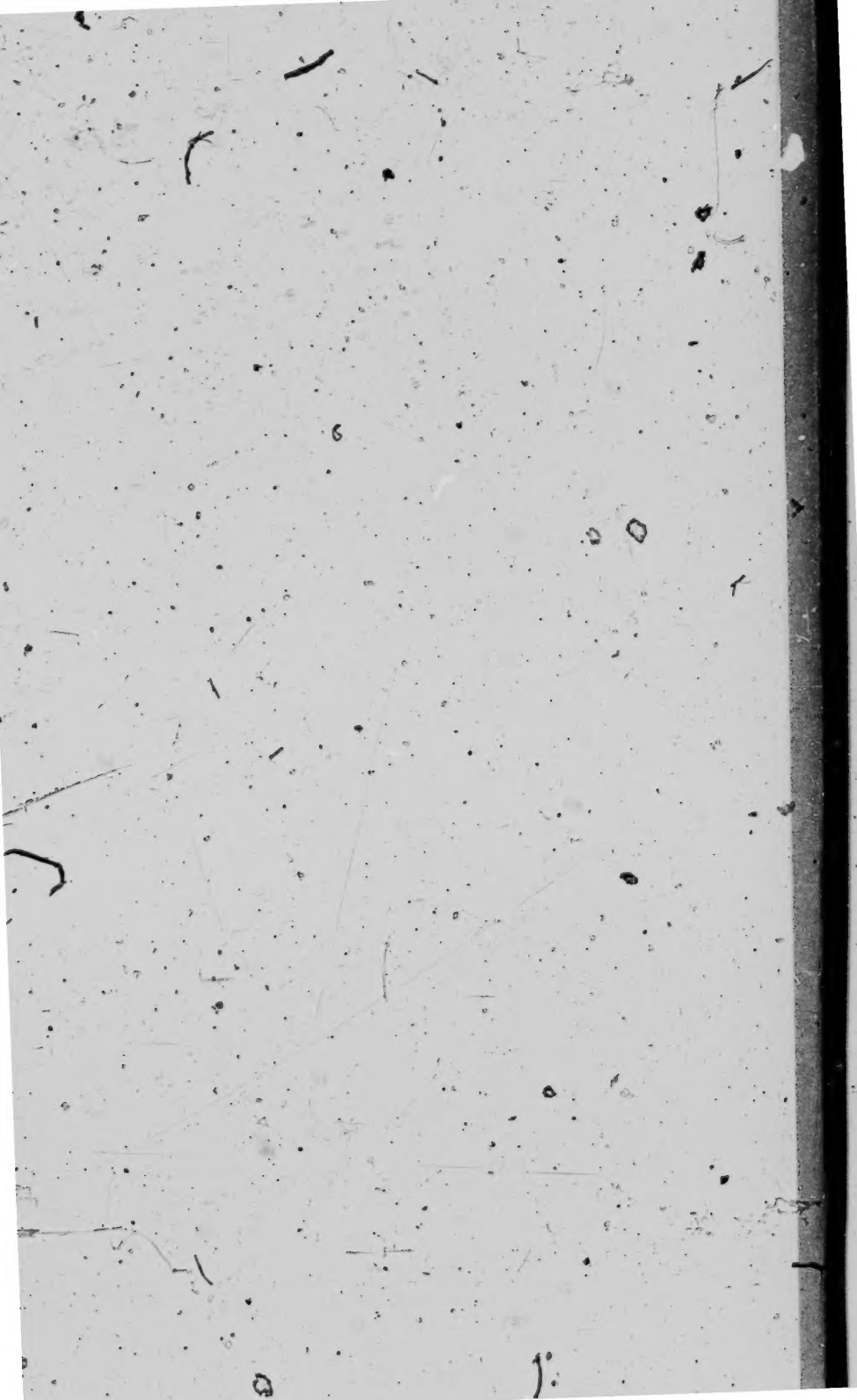
Brief for Petitioners.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

✓ JOSEPH W. HENDERSON,
✓ JOHN B. MCGURL,
✓ THOMAS F. MOUNT,
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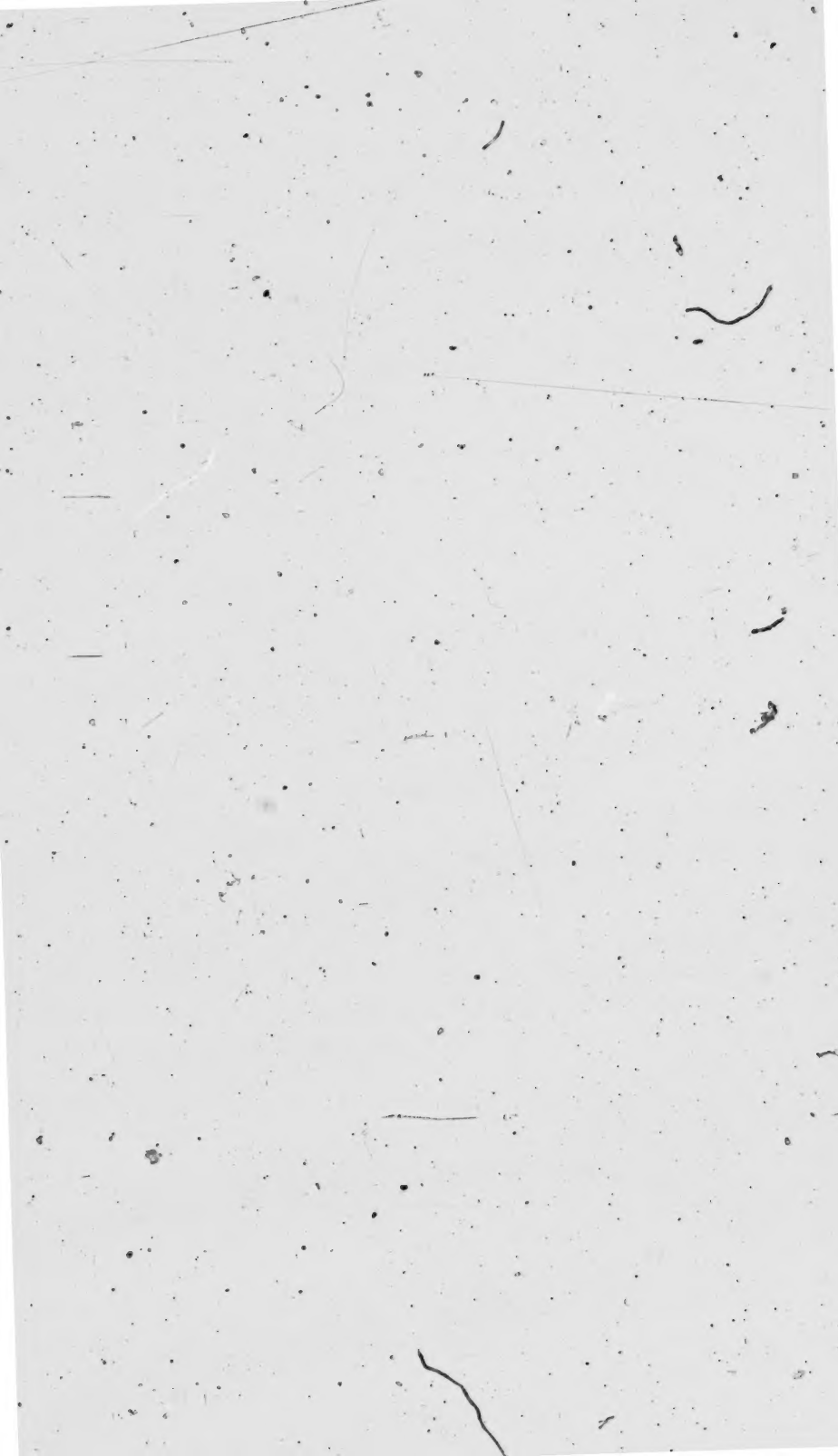
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IN THE
Supreme Court of the United States.

—
No. 690. October Term, 1939.
—

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. Mc GURL, THOMAS B. EVANS AND WILLIAM ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS, THEIR NEXT FRIEND,

Respondents.

—
ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.
—

BRIEF FOR PETITIONER.

This case comes before the Court on Writ of Certiorari issued to review a final decree of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

On December 1, 1937, an opinion was filed by the Honorable Albert B. Maris, (R. 15) sur Defendants' Motion to Dismiss Bill of Complaint and is reported in 21, F. Supp.

581. The opinion of the Honorable Albert B. Maris sur Pleadings and Proof was filed on June 18, 1938 (R. 120) and is reported in 24 F. Supp. 271.

The opinion of the United States Circuit Court of Appeals for the Third Circuit written by Circuit Judge Clark and concurred in by Circuit Judge Biggs and District Judge Kalodner (R. 155), was filed on November 10, 1939, and is reported in 108 F. (2d) 683.

JURISDICTION.

The Jurisdiction of this Court to review the final decree of the United States Circuit Court of Appeals for the Third Circuit on a writ of certiorari is provided by Section 240 (a) of Judicial Code as amended by the Act of February 13, 1925 c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a).).

The decision of the aforesaid Circuit Court of Appeals concerns an important question of constitutional law involving the morale and welfare of the nation. Said decision is in conflict both with prior decisions of your Honorable Court and with decisions of state courts dealing with the identical question.

STATEMENT OF THE CASE.

The Board of Education of the Minersville School District, Schuylkill County, Pennsylvania, conducting the Minersville Public Schools, adopted a resolution requiring teachers and pupils to salute the national flag at daily exercises and providing that a refusal to salute the flag be regarded as an act of insubordination (R. 45, 121).

At the opening of school exercises, the teachers and pupils of Minersville Public Schools place their right hands on their breasts and speak the following words:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R. 46, 92).

In 1935 Lillian Gobitis, aged twelve, and William Gobitis, aged ten, (R. 77) were pupils at the Minersville Public School. They are members of Jehovah's Witnesses and, as such, had covenanted to obey Jehovah's commandments, believing that a failure to obey the precepts in the Bible will result in their eternal destruction (R. 122). The Gobitis children refused to salute the national flag as required by the Minersville Public Schools at its daily school exercises because they believed so to do was contrary to the law of God as set forth in Chapter 20 of Exodus (R. 122). The Bible is their only creed (R. 49).

The School Board regarded said refusal as an act of insubordination and on November 6, 1935 Lillian Gobitis and William Gobitis were expelled from the Minersville Public Schools solely for their refusal to salute the national flag at the daily exercises of the school (R. 46, 47, 122, 123). Since their expulsion, they have been unable to attend the Minersville public schools (R. 47, 123).

On May 3, 1937 Walter Gobitis individually and Lillian Gobitis and Walter Gobitis minors by their father Walter Gobitis filed a bill in equity in the District Court of the United States for the Eastern District of Pennsylvania to compel the Minersville School District, its Board of Education and Superintendent of Schools to reinstate the Gobitis children without their being required to salute the national flag (R. 4).

Specification of Errors to Be Urged

A motion to dismiss the bill of complaint for lack of jurisdiction was denied on December 1, 1937 (R. 15).

On June 18, 1938, after hearing sur pleadings and proofs, the said District Court entered a final decree as prayed for by the complainants (R. 128).

An appeal was taken to the Circuit Court of Appeals for the Third Circuit, which court affirmed the final decree of the District Court on November 10, 1939, holding that said resolution abridged the religious rights of the Gobitis children and was therefore unconstitutional (R. 155).

On March 4, 1940 a petition for writ of certiorari to review said decree was granted by your Honorable Court (R. 184).

**SPECIFICATION OF ERRORS INTENDED TO BE
URGED.**

The petitioners intend to urge the following Assignments of Error—first, those concerning the question whether said expulsion of the Gobitis children abridged the constitutional rights of the respondents, to wit: Assignments of Error Nos. 1, 2, 9, 10, 12, 13, 14, 23, 24, 25 (R. 132, 134, 140, 141, 142, 143, 146, 147), and secondly, those concerning the question whether the refusal of the Gobitis children to salute the flag was founded on a religious belief, to wit: Assignments of Error Nos. 1, 2, 12, 15, 24, 25 (R. 132, 134, 142, 143, 146, 147).

QUESTIONS PRESENTED.

The Board of Education of Minersville School District adopted a resolution requiring teachers and pupils to salute the national flag at daily school exercises and providing that a refusal be regarded as an act of insubordination. The minor-respondents, members of a sect called Jehovah's Witnesses, while pupils at said schools, refused to salute the flag believing that to do so would violate the written law of Almighty God and result in their eternal destruction.

1. Was the expulsion of the minor-respondents for the refusal to salute the flag in violation of any of their rights under the Constitutions of the United States of America and of the Commonwealth of Pennsylvania?

2. Is the refusal of said pupils to salute the national flag at a daily exercise of a public school founded on a religious belief?

ARGUMENT.¹**SUMMARY OF ARGUMENT.**

- I. THE RESOLUTION OF THE SCHOOL BOARD REQUIRING PUPILS TO SALUTE THE FLAG WAS LAWFULLY ADOPTED, AND THE EXPULSION OF THE GOBITIS CHILDREN WAS WITHIN ITS POWER AND AUTHORITY.
- II. THE EXPULSION OF THE GOBITIS CHILDREN DID NOT VIOLATE ANY RIGHT UNDER THE CONSTITUTION OF THE UNITED STATES.
- III. THE EXPULSION OF THE GOBITIS CHILDREN DID NOT VIOLATE ANY RIGHT UNDER THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA.
- IV. THE REFUSAL OF THE GOBITIS CHILDREN TO SALUTE THE NATIONAL FLAG AT SCHOOL EXERCISES BECAUSE THEY BELIEVED TO DO SO WOULD VIOLATE THE WRITTEN LAW OF ALMIGHTY GOD AS CONTAINED IN THE BIBLE WAS NOT FOUNDED ON A RELIGIOUS BELIEF.

I. The Resolution of the School Board Requiring Pupils to Salute the Flag Was Lawfully Adopted, and the Expulsion of the Gobitis Children Was Within Its Power and Authority.

The establishment and maintenance of the public school system of Pennsylvania has been delegated to the state leg-

¹ Consent to file a brief as amicus curiæ has been given by the petitioners both to the Committee of the American Bar Association on the Bill of Rights and to the American Civil Liberties Union. The Court's attention, however, is called to the fact that at the meeting of the House of Delegates of the American Bar Association, the representative body of said association, held at Chicago on January 9, 1940;

islature by Article X of the Pennsylvania Constitution, and the public school system is presently administered under the Act of May 18, 1911, P. L. 309 and the amendments thereto, which act is "intended as an entire and complete School Code." (24 Purdon's Pennsylvania Statutes Annotated (hereinafter cited as "P. S.") §§ 1 to 2394.)

The Commonwealth is subdivided into school districts. Act of May 18, 1911, P. L. 309, art. I § 101, as amended by Act of April 24, 1929, P. L. 642, § 1 (24 P. S. 21). The public schools in each district are administered by a local board of school directors. Act of May 18, 1911, P. L. 309, art. II § 201, as amended by Act of June 1, 1933, P. L. 1152, § 16 (24 P. S. § 161). The board of school directors in each school district equips, furnishes and maintains the public schools for children residing in its district. Act of May 18, 1911, P. L. 309, art. IV § 401, as amended by the Act of May 29, 1931, P. L. 243, § 8 (24 P. S. § 331).

Every child between the ages of six and twenty-one who is a resident of any school district may attend the public schools in that district. Act of May 18, 1911, P. L. 309, art. XIV, § 1401, as amended by the Act of May 29, 1931, P. L. 243, § 32 (24 P. S. § 1371). However, children within the "compulsory school age" (from eight until seventeen years of age) need not attend the public schools but, if it is desired, may attend any other day school where specific subjects and activities are taught. Act of May 18, 1911, P. S. 309, art. XIV, § 1414, as now amended by Act of June 24, 1939, P. L. 786, § 2 (24 P. S. § 1421).

the House of Delegates authorized its committee to intervene in this proceeding by a margin of two votes, the division having been fifty-three (53) votes for intervention to fifty-one (51) votes against intervention. *American Bar Association Journal*, Vol. XXVI, No. 2, (February 1940) at page 120.

The School Code also provides that the board of school directors in each district "may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper . . . regarding the conduct and deportment of all pupils attending the public schools in the district" Act of May 18, 1911, P. L. 309, art. IV, § 404, as amended by Act of May 29, 1931, P. L. 243, § 9 (24 P. S. § 338).

"Every principal or teacher in charge of a public school . . . may temporarily suspend any pupil on account of disobedience or misconduct, and . . . the Board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him" Act of May 18, 1911, P. L. 309, art. XIV, § 1411 (24 P. S. § 1383).

The legislature has further provided in the School Code that all public schools and private schools in this Commonwealth shall teach certain enumerated subjects in which is included "*the history of the United States and Pennsylvania, civics, including loyalty to the State and National Government.*"² Act of May 18, 1911, P. L. 309, art. XVI, § 1607, as amended by Act of May 20, 1937, P. L. 732, § 1 (24 P. S. § 1551). The School Code, however, does not designate the particular method by which "civics" and "loyalty to the State and National Government" is to be taught, but the legislature has wisely and obviously left that to the discretion of the local school boards.

In 1935 the Board of Education of Minersville School District by appropriate resolution required teachers and pupils in its public schools to salute the national flag as part of the daily school exercises and provided that a refusal to

² Words italicized in the above quotation and in all subsequent quotations have been italicized by counsel, except where otherwise indicated.

salute the flag should be regarded as an act of insubordination.

Lillian Gobitis, aged twelve, and William Gobitis, aged ten, (R. 77) were at that time pupils at the Minersville Public School. They are members of Jehovah's Witnesses and, as such, had covenanted to obey Jehovah's commandments, believing that a failure to obey the precepts in the Bible will result in their eternal destruction (R. 122). The Gobitis children refused to salute the national flag as required by the Minersville Public Schools at its daily school exercises because they believed so to do was contrary to the law of God as set forth in Chapter 20 of Exodus (R. 122). Their only creed is the Bible. (R. 49).

The School Board regarded said refusal as an act of insubordination and on November 6, 1935 Lillian Gobitis and William Gobitis were expelled from the Minersville Public Schools solely for their refusal to salute the national flag at the daily exercises of the school. (R. 46, 47, 122, 123.)

The present proceeding was instituted to compel the School Board to reinstate the Gobitis children without their being required to salute the flag on the ground that the resolution deprived them of constitutional rights. The Courts below erroneously sustained the respondents' contentions, namely, that the resolution of the Board of Education of the Minersville School District was invalid when enforced against the respondents, because such enforcement deprived them of "religious freedom" guaranteed by the Constitution of the Commonwealth of Pennsylvania and also denied the respondents equal protection of the law and due process of the law as provided in the Fourteenth Amendment of the Constitution of the United States. In their Bill of Complaint the respondents also alleged that the resolution violated the Eighth Amendment to the Constitution of the

United States, but the Courts-below properly disregarded that allegation for the reason, that the Eighth Amendment does not restrict any act of a state but only prohibits cruel punishments inflicted under acts of Congress.

We submit, first, that the Bill of Complaint should have been dismissed because the right of the school board to adopt and enforce such a regulation under the so-called "police power" is superior to any religious right, if any, which otherwise might have been protected by the Fourteenth Amendment of the Constitution of the United States and Article I of the Constitution of the Commonwealth of Pennsylvania. Secondly, the refusal of the Gobitis children to salute the national flag because they believed to do so would violate the written law of Almighty God is not founded on a religious belief, and their Bill of Complaint should have been dismissed because they wilfully violated a regulation of the local school district which had been lawfully adopted and enforced.

II. The Expulsion of the Gobitis Children Did Not Violate Any Right Under the Constitution of the United States.

The precise question to be determined in this case has already been presented to your Honorable Court on four occasions within the past three years and in each case a regulation or statute similar to that involved in this case has been upheld in per curiam opinions.

In *Leoles v. Landers*, 302 U. S. 656 (1937), and *Hering v. State Board of Education*, 303 U. S. 624 (1938) appeals from courts of last resort in the states of Georgia and New Jersey, where requirements to salute the flag were held reasonable and constitutional, were dismissed by your Honorable Court for want of a substantial federal question.

Subsequently your Honorable Court dismissed an appeal from a similar decision by the Supreme Court of California for want of jurisdiction, and, "treating the papers whereon the appeal was allowed as a petition for writ of certiorari" also denied certiorari, *Gabrielli v. Knickerbocker*, 306 U. S. 621 (1939).

In *Johnson v. Deerfield*, 306 U. S. 621 (1939) your Honorable Court affirmed a judgment of the United States District Court of Massachusetts, wherein a resolution requiring pupils to salute the flag was held to be constitutional. Petition for rehearing was denied in *Johnson v. Deerfield*, 307 U. S. 650 (1939).

In the above cited cases the courts of last resort of Georgia, New Jersey, and California and the District Court of Massachusetts had previously considered whether the particular regulation or statute involved in the case before it violated any provision of the Constitution of the United States or any provision of its state constitution. Each court was unanimous in holding the requirement to salute the flag constitutional. *Leoles v. Landers*, 184 Ga. 580, 192 S. E. 218 (1937); *Hering v. State Board of Education*, 118 N. J. L. 566, 117 N. J. L. 455, 194 Atl. 177, 189 Atl. 629 (1937); *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 391 (1938); *Johnson v. Deerfield*, 25 F. Supp. 918 (D. C. Mass. 1939).

The Supreme Court of Georgia in *Leoles v. Landers*, 184 Ga. 580, 585, 192 S. E. 218, 221, stated as follows:

"It is contended that such action on the part of the school authorities denies to the plaintiff the equal protection of the law, due process of law, and further infringes the provisions of the State Constitution prohibiting the establishment of religion and securing to her religious freedom, and seeks to compel her to act

in disobedience to her religious beliefs and teachings. Code, §§ 2—112, 2—113 (Const. Ga. art. 1, § 1, para. 12, 13) 1—801 (Const. U. S. amend. 1) 2—103 (Const. Ga. art. 1, § 1, par. 3) 1—815 (Const. U. S. Amend. 14). With the foregoing contentions we cannot agree. The United States is a democratic country with a republican form of government. Code, § 1—407 (Const. U. S. art. 4, sec. 4). It is a land of freedom. However, those who reside within its limits and receive the protection and benefits afforded to them must obey its laws and show due respect to the government, its institutions and ideals. The flag of the United States is a symbol thereof, and disrespect to the flag is disrespect to the government, its institutions and ideals, and is directly opposed to the policy of this state."

In *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 88, 82 P. (2d) 391, 392 (1938), the Supreme Court of California referring to the decisions in the cases of *Leoles v. Landers* and *Hering v. State Board of Education*, *supra*, stated:

"By reason of the above decisions of the Supreme Court of the United States the question as to whether the flag saluting requirement violates the due process clause of the Fourteenth Amendment to the federal constitution, or any other provisions of the federal constitution, is no longer open."

"It must be accepted as a postulate, by reason of the subject matter involved in the dismissal of the above cited appeals, that every argument relied upon in the instant case, both for and against the power of appellant board to enforce its action of expulsion as an asserted violation of the religious freedom clause of the federal constitution, and every argument and reason urged in the many decided cases of the several courts of the country in which the precise question was presented with respect to the violation of said re-

ligious freedom clause, came to the cognizance of the United States Supreme Court and was duly weighed by it in the process of reaching the conclusion that no substantial federal question was involved in said appealed cases. The action taken by said court in disposing of said appeals can not be taken in any other sense than that no violation of respondent's constitutional right in the instant case has been committed by the act of excluding respondent from attendance at said public school until she shall comply with the rule which she refuses to obey."

The Court of Appeals of the State of New York and the Supreme Judicial Court of Massachusetts have also sustained the expulsion of members of Jehovah's Witnesses from public schools for refusal to salute the national flag at school exercises. *People v. Sandstrom*, 279 N. Y. 523, 18 N. E. (2d) 840 (1939); *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577 (Mass. 1937).

In *Nicholls v. Mayor and School Committee of Lynn*, *supra*, at page 581, Mr. Chief Justice Rugg considered at length the question whether the enforcement of the rule of the school board violated the Constitution of the United States and, after review of the decisions of your Honorable Court, stated:

"That decision" (referring to *Hamilton v. Regents*, 293 U. S. 245) "appears to us to support in general the contentions of the respondents. It stamps with disapproval the contention of the petitioner that any right secured to him by the Federal Constitution or its Amendments has been infringed."

The Courts-below disregarded the reasoning of the courts of last resort above referred to and endeavored to distinguish the issue in this case from that in the four cases

in which your Honorable Court dismissed appeals. We submit that the Courts-below fell into error.

The District Court ignored the decisions of your Honorable Court in the *Leoles Case* and the *Hering Case* (the *Gabrielli Case* and the *Johnson Case* had not been decided at that time) and confined itself to distinguishing the facts in this proceeding from the facts in *Hamilton v. Regents*, 293 U. S. 245 (1934) and *Coale v. Pearson*, 290 U. S. 597 (1933) which cases your Honorable Court had cited as authority for the dismissal of appeals in the *Leoles Case* and *Hering Case*.

The Circuit Court of Appeals recognized that your Honorable Court had adjudicated this question on four previous occasions but held that those four decisions were not binding precedents or authoritative because they bore "the per curiam imprimatur of the Supreme Court" and were not lengthy dissertations by an individual justice. Then as a further reason for not following these four decisions, the Circuit Court of Appeals stated that in some of these cases the requirement had been adopted by the legislature and not by the school board and that in all four cases the court of the last resort in each state had already added judicial approval to the action of the legislative branch of government.

We submit that such factual differences are immaterial and that the Courts-below were bound by your rulings in said four cases and should have dismissed respondents' Bill of Complaint. It is of no significance whether the legislature itself or whether a school board as its duly authorized agency or instrumentality required pupils to salute the flag nor is it material to the determination of this case or any case of this nature whether the Supreme Court of Pennsylvania had been afforded an opportunity to add judicial ap-

proval to such a requirement. The respondents themselves invoked the jurisdiction of the federal courts, and the motion of the School Board to dismiss the complaint on the ground that jurisdiction was in the state courts was strongly and successfully opposed by the respondents. However, it might incidentally be noted that the only state court in Pennsylvania where this precise question has been presented sustained the constitutionality of a similar requirement. See *Estep v. The School District of the Borough of Canonsburg*, *infra* at page 26.

Finally, the Circuit Court of Appeals, apparently as a "catch-all" reason for not following the four "flag salute cases" of this Court, pointed out that these decisions have been disapproved by the commentators in various law reviews. While interesting and at times instructive, articles in law reviews and legal periodicals have not yet been accepted as authority superior to the decisions of your Honorable Court.

Irrespective of the applicability of the aforesaid cases, the requirement to salute the flag is constitutional, whether considered solely on principle or in the light of precedents established by other analogous cases.

The right of a state legislature or of a state's duly authorized instrumentality to adopt and enforce regulations in the interest of the public weal has been repeatedly affirmed by numerous decisions of your Honorable Court. The Fourteenth Amendment does not limit or restrict this power where the health, safety, peace, morals, education or general welfare of the people is concerned. This power is superior to any religious right or liberty which might otherwise be protected by state or federal constitution. It is the very basis and foundation of government and transcends all other powers. *Salus populi suprema lex.*

"Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens, and to the preservation of good order and the public morals." *Beer Co. v. Massachusetts*, 97 U.S. 25, 33 (1887).

In *Reynolds v. United States*, 98 U. S. 145 (1878), the defendant was convicted of bigamy notwithstanding the fact that the Mormon Church, of which he was a member, permitted its male members to practice polygamy. Mr. Chief Justice Waite stated on page 166:

"Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices."

"... Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."

See also *Davis v. Beason*, 133 U. S. 333 (1890) where the defendant's belief in the tenets of the Mormon Church did not justify his violation of a state statute.

In *Jacobson v. Massachusetts*, 197 U. S. 11 (1905) a statute requiring vaccinations by the citizens of Cambridge, Massachusetts, was held constitutional, the authority to enact a statute being within the "police power" of the state.

In the *Selective Draft Law Cases*, 245 U. S. 366 (1918) your Honorable Court held that Congress had the right to

compel military service and that the provisions in the act exempting ministers and theological students and granting other relief to members of various religious sects did not make the law repugnant to the First Amendment either as the establishment of a religion or as an interference with the free exercise of religion.

The National Prohibition Act and regulations thereunder limiting the amount of sacramental wine which each Jewish family might use during the year was held constitutional and not in violation of the First Amendment guaranteeing religious liberty.. *Shapiro v. Lyle*, 30 Fed. (2d) 971 (D. C. Wash. 1929).

The most recent decision in which the religious guarantees of our federal constitution have been considered at length by your Honorable Court is the case of *Hamilton v. Regents*, 293 U. S. 245 (1934). In that case the minor-plaintiffs had been suspended from the University of California because they refused, for alleged religious reasons, to take a course in military training. The minor-plaintiffs attempted to compel the regents of the university to admit them as students without being required to take the prescribed course in military training. The writ of mandamus was denied and the judgment was affirmed by your Honorable Court, Mr. Justice Butler saying:

“Appellants assert—unquestionably in good faith—that all war, preparation for war, and the training required by the university, are repugnant to the tenets and discipline of their church, to their religion and to their consciences.” (p. 261)

“There need be no attempt to enumerate or comprehensively to define what is included in the ‘liberty’ protected by the due process clause. . . . Taken on the

basis of the facts alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.

"Viewed in the light of our decisions that proposition must at once be put aside as untenable." (p. 262)

"Plainly there is no ground for the contention that the regents' order, requiring able-bodied male students under the age of twenty-four as a condition of their enrollment to take the prescribed instruction in military science and tactics, transgresses any constitutional right asserted by these appellants." (p. 265)

To the same effect is the case of *Coale v. Pearson*, 290 U. S. 597 (1933).

Just as it was recognized in *Reynolds v. United States*, *supra*, that permitting a man to excuse his practices because of a religious belief would make the professed belief superior to the law of the land, so also in *United States v. MacIntosh*, 283 U. S. 605 (1931) your Honorable Court held that naturalization was properly denied an applicant who, because of his religious beliefs and conscientious objections, was unwilling to take the oath of allegiance without qualifications. Mr. Justice Sutherland, in his opinion, said:

"When he speaks of putting his allegiance to the will of God above his allegiance to the government, it is evident, in the light of his entire statement, that he means to make *his own interpretation*³ of the will of God the decisive test which shall conclude the government and stay its hand." (p. 625).

³ Italics contained in opinion.

In these days of social, economic and political unrest, the preservation of the state is dependent upon the maintenance of a proper morale as much as the maintenance of the health, peace, safety, and morals of the people. The state is much more susceptible to insidious attacks in these days of strain and stress than would appear from casual observation, and the maintaining of a proper morale among the people is, therefore, essential to the preservation of our nation. Any break-down in the *esprit de corps* or morale of this country may conceivably have a more devastating effect upon the nation than a catastrophe resulting from disease, breach of peace, or even an invasion of the realm. Thus the necessity of strengthening the morale of this country becomes self-evident. Your Honorable Court can not help taking judicial notice of the present condition of unrest, and any effort by educational authorities to strengthen the morale should be fostered and encouraged.

The salute is "a ceremony clearly designed to inculcate patriotism" and has no religious significance whatsoever. *Nicholls v. Mayor and School Committee of Lynn, supra*. In saluting the flag a pupil is neither worshipping an idol nor doing anything which is any way connected with or related to any religious observance or form of worship. "The act of saluting the flag of the United States is by no stretch of reasonable imagination 'a religious rite'. It is only an act showing one's respect for the government, similar to arising to a standing position upon hearing the National Anthem being played." *Leoles v. Landers*, 184 Ga. 580, 587, 192 S. E. 218, 222 (1937).

Students at the public schools are instructed in patriotism and love of country in many ways—by the study of history and civics, by the observance of legal holidays, by special exercises on days of national or patriotic signifi-

cance, by the singing of our national anthem, by saluting the national flag, and by other similar studies and activities. While all of these studies and activities contribute to the development of a pupil's sense of loyalty, the exercise of saluting the flag is as reasonable a method of teaching loyalty as any of the other studies and activities and should not be omitted because of a pupil's alleged religious beliefs. The School Board so decided when it adopted the resolution requiring the salute. Such decision, being within the authority of the School Board, should not be set aside by the Courts, especially when the morale of the country would be weakened and its welfare adversely affected.

While it would seem on first impression that little harm may result from the failure of the two Gobitis children to salute the flag, such is not the case. Dr. Roudabush, Superintendent of the Minersville Public Schools, testified that, if pupils be permitted to refuse to salute the flag, such refusal would have a demoralizing effect on the entire school group.

As he stated: "The tendency would be to spread. In our mixed population where we have foreigners of every variety, it would be no time until they would form a dislike, a disregard for our flag and country." (R. 92.)

When interrogated as to whether or not in time the fact that a number of students failed to salute the flag would lead to any breakdown of government from the standpoint of the safety of the public, the Superintendent of Schools stated that he believed such would be the effect (R. 93). Dr. Roudabush, as superintendent of schools, is familiar with conditions surrounding the youth of today and was particularly qualified to testify as to pupils' reactions to such a situation.

We submit, however, that, even if Dr. Roudabush had not so testified, your Honorable Court would take judicial notice of such facts and reach a similar conclusion.

The morale of each community group affects the morale of other groups and in due course that of the state and of the nation. The decision in this case is of nation wide significance and will effect not merely the Minersville School District but countless other school districts throughout this country. The decisions, to which we have heretofore referred, show that numerous members of Jehovah's Witnesses have refused to salute the national flag and that this practice is not local or restricted to any particular community but is national in scope. The courts have been resorted to in Texas, California, Georgia, Pennsylvania, New Jersey, New York and Massachusetts. Undoubtedly there are many other cases throughout this land where pupils have refused to salute the flag but no litigation was thereafter instituted. If the contention of the respondents is sustained, and a pupil in the public schools be permitted to refuse to salute the national flag for alleged religious beliefs, a large number of children, who are members of Jehovah's Witnesses and possibly many who are not, will refuse to salute the national flag at daily school exercises. Such demonstration of disrespect to our government will influence and affect the other pupils in the schools, and the morale of their respective communities, and ultimately of the nation itself, will be shaken and demoralized.

The youth of today will be the adult citizens of tomorrow and the public schools should be permitted through patriotic exercises to inculcate in them a love of country, and a group or groups of pupils, for alleged religious beliefs, should not be allowed to be disrespectful to the country and

to promote disloyalty to the very government which guarantees them religious freedom in the *worship* of God.

From an educational point of view a requirement that pupils salute the flag at daily school exercises is as important as the study of history and other subjects and from an economic and social point of view such a requirement is more essential in maintaining the morale and welfare than many of the other requirements which have been held to be within the "police power" of the states.

III. The Expulsion of the Gobitis Children Did Not Violate Any Right Under the Constitution of the Commonwealth of Pennsylvania.

Article I, Section 3 of the Constitution of the Commonwealth of Pennsylvania provides as follows:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship."

Mr. Chief Justice Gibson, as early as 1828, stated that the rights of conscience are:

"Simply a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience sake, the doing or forbearing of which, is *not prejudicial to the public weal.*"⁴ *Commonwealth v. Leshner*, 17 S. & R. (Pa.) 155, 160.

⁴ Italics contained in opinion.

Statutes, ordinances, rules and regulations which have conflicted with religious beliefs of individual citizens but which had been enacted for the public good have been held constitutional on numerous occasions by the courts of Pennsylvania, notwithstanding the above quoted constitutional guarantee.

In *Wilkes-Barre v. Garabed*, 11 Pa. Superior 355, 366 (1899), an officer in the Salvation Army had used drums while conducting an open meeting in the streets of Wilkes-Barre notwithstanding a municipal ordinance prohibiting their use. The defendant officer contended that the Salvation Army understands the Divine Command for it to go into the streets and preach the gospel and that the use of the drum had become a regulation part of its service. The officer, however, was fined and the judgment was affirmed on appeal on the ground that "religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system."

In *Commonwealth v. Herr*, 229 Pa. 132, 141, 78 Atl. 68, 71 (1910), an act to prohibit teachers wearing any dress or mark indicating a religious affiliation was held constitutional. That case contained the following pertinent remarks regarding the religious rights of citizens of Pennsylvania:

"... the rights of conscience are no less sacred than the rights of property; test oaths and religious disqualifications belong to a period further back than the memory of the present generation can reach, and it is to be hoped they may never be restored. But broad as are these declarations of our constitution, and sacred as are the religious freedom and the rights of conscience they secure, yet it must be apparent to any person upon reflection, and has been repeatedly declared

by the highest judicial authority, that they do not mean, unqualifiedly, that it is beyond the power of the legislature to enact any law which will restrain individuals from doing that which, if it were not for the law, their consciences would teach them to be their moral or religious duty. Indeed it is impossible to see how civil government could exist, if the dictates of the individual conscience were in every instance where they come in conflict with the law of the land the paramount rule of action . . . Many other illustrations may be found in decided cases of the general principles that the religious freedom and the rights of conscience guaranteed by the constitution do not necessarily and always stand in the way of the enforcement of laws commanding or prohibiting the commission of acts even by those who conscientiously believe it to be their religious or moral duty to do or refrain from doing them. For example, not to go outside of Pennsylvania, a Jew who refused to be sworn in the trial of a case on Saturday because it was his Sabbath was fined: *Stansbury v. Marks*, 2 Dall. 213. The conscientious scruples of a Jew to appear in court and to attend the trial of his case on the same day were held to be no ground for the continuance of his cause: *Phillips v. Gratz*, 2 P. & W. 412. The act prohibiting all worldly employment upon the first day of the week has been held not to be in contravention of the constitutional rights under consideration, even where applied to persons whose religious belief leads them to observe another day of the week as their Sabbath: *Com. v. Wolf*, 3 S. & R. 48; *Specht v. Com.*, 8 Pa. 312. The same was held to be true as to persons who conscientiously believe it to be their religious duty to labor the first six days of the week and to keep the seventh day as the Sabbath. *Waldo v. Com.*, 9 W. N. C. 200. . . . Then after speaking of the views of Mr. Jefferson upon the subject he proceeded: 'He denies the right of society to interfere only where society is not a party in interest, the question, with its consequences, being

between the man and his Creator; but as far as the interests of society are involved, its right to interfere on principles of self-preservation is not disputed. And this right is insoluble into the most absolute necessity; for, *were the laws dispensed with, wherever they happened to be in collision with some supposed religious obligation, government would be perpetually falling short of the exigence.*"

The reading of the Bible has been held by the lower courts of the Commonwealth of Pennsylvania not to be in contravention of any constitutional provision. See *Stevenson v. Hanyon*, 7 Pennsylvania District Reports 585 (C. P. Lackawanna Co. 1898). No appeal was taken from this decision.

The Superior Court of Pennsylvania in the case of *Pittsburgh v. Ruffner*, 134 Pa. Superior 192, 4 A. (2d) 224 (1938), has recently considered the right of a member of Jehovah's Witnesses to distribute books and pamphlets issued by Jehovah's Witnesses without registering with the Bureau of Police or applying for a permit or a license as required in a city ordinance.

The defendant contended that the ordinance was "invalid as applied to the acts of the defendant in that it "violated" the clause of the Constitution of the Commonwealth of Pennsylvania providing for religious freedom and freedom of worship and also the Fourteenth Amendment of the Constitution of the United States." The court held that the defendant had failed to take his appeal within the prescribed time, but "because of the insistence of the appellant's counsel" the Superior Court, nevertheless, "considered the merits of the case and held that the ordinance did not infringe upon the appellant's constitutional right of freedom of religious worship or the freedom of the press."

President Judge Keller stated at 134 Pa. Superior 198 and 4 A. (2d) 227 that:

"The ordinance in question can not, by any stretch of the imagination, be held to be directed against freedom of worship. . . .

"This appellant is perfectly free to worship God according to the dictates of his own conscience, separately or with his family and co-religionists in his home or theirs and in church, chapel, assembly or other gathering place. . . . Furthermore, the constitutional guarantee of freedom of religious worship furnishes no ground for striking down a reasonable and salutary ordinance designed to protect people in their homes and offices from being victimized by unscrupulous and unauthorized agents."

While the appellate courts of Pennsylvania have not had occasion to consider the question of the right of a pupil to refuse at daily school exercises to salute the flag because of alleged religious beliefs, the Superintendent of Public Instruction in the Commonwealth of Pennsylvania requested an opinion from the Attorney General of the Commonwealth concerning this question and was advised by the Attorney General in an opinion dated October 26, 1935 that the pupils should be required to participate in such exercises and that a refusal should be considered "an act of insubordination and treated as any other refusal to obey the lawful regulations of our schools." The opinion is reported in *Oaths of Allegiance in Public Schools*, 25 Pennsylvania District and County Reports 8 (1935).

Subsequently in the unreported case of *Murray Estep, by Ebert Estep, his father and next friend v. The School District of the Borough of Cannonsburg et al.*, as of May Term 1936, No. 51, the Court of Common Pleas of Washington County, Pennsylvania, on April 24, 1937, quashed the

plaintiff's writ of alternative mandamus and upheld the expulsion of the minor-plaintiff, a member of Jehovah's Witnesses, who, like the Gobitis children, had refused to salute the flag. No appeal was taken by the plaintiff from this decision.

We, therefore, submit that the regulation of the Minersville School District requiring the pupils to salute the national flag at daily school exercises did not violate any provision of the Constitution of the Commonwealth of Pennsylvania but was within the "police power" of the Commonwealth.

IV. The Refusal of the Gobitis Children to Salute the National Flag at School Exercises Because They Believed to Do So Would Violate the Written Law of Almighty God as Contained in the Bible Was Not Founded on a Religious Belief.

Teachers and pupils of Minersville Public Schools under the resolution of the Board of Education are required at the opening of school exercises to place their right hands on their breasts and speak the following words:

"I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all."

The teachers and pupils while these words are being spoken extend their right hands so as to salute the flag (R-46, 92).

This simple patriotic ceremony has been performed by countless pupils for many years in all parts of this country. It is patriotic in design and purpose and has no religious significance either subjectively or objectively.

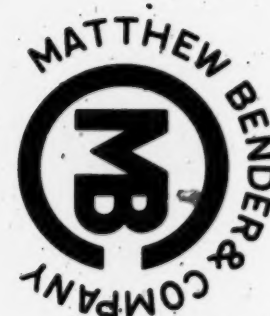
We do not feel that a religious excuse for the disobedience of a regulation which of itself has no religious significance involves a question of religious liberty.

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The act of saluting the national flag at daily school exercises can not be made a religious rite by the respondents' mistaken interpretation of the Bible. The ceremony is in no way referable to the religious beliefs of any of the participants and it therefore follows that a pupil's refusal to salute the flag cannot be based on a religious belief.

"The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus*⁵ or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise of thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and *to exhibit his sentiments in such form of worship as he may think proper*, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect." *Davis v. Beason*, 133 U. S. 333, 342 (1890).

The act of saluting the flag has no bearing on what a pupil may think of his Creator or what are his relations to his Creator. Nor is a pupil required to exhibit his religious sentiments in a particular "form of worship" when saluting the flag because the ceremony is not, by any stretch of the imagination, a "form of worship". Like the study of history or civics or the doing of any other act which might make a pupil more patriotic as well as teach him or her "loy-

⁵ Italics contained in opinion.

alty to the State and National Government", the salute has no religious implications.

Mr. Chief Justice Rugg in the case of *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577, 580 (Mass. 1937) designated the exercise as a "ceremony clearly designed to inculcate patriotism and to instill a recognition of the blessings conferred by orderly government under the Constitution of the State and Nation" and supported that conclusion with the following observation:

"The salute and pledge do not go beyond that which, according to generally recognized principles, is due to government. There is nothing in the salute of the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance. It does not in any reasonable sense hurt, molest, or restrain a human being in respect to 'worshipping God' within the meaning of words in the Constitution. The rule and the statute are well within the competency of legislative authority. They exact nothing in opposition to religion. They are directed to a justifiable end in the conduct of education in public schools."

In *Leoles v. Landers*, 184 Ga. 580, 587, 192 S. E. 218, 222 (1937) Mr. Chief Justice Russell, when considering this very question, made this comment:

"The act of saluting the flag of the United States is by no stretch of reasonable imagination 'a religious rite.' It is only an act showing one's respect for the government, similar to arising to a standing position upon hearing the National Anthem being played; and would we denominate this action as a religious rite? So for a pupil to salute the flag of this country is just a part of a patriotic ceremony, and act of respect to the institutions and ideals of the land that is affording them a free education and a safe and bountiful place to live, and is

not a bowing down in worship of an image in the place of God."

Mr. Chief Justice Crane of the Court of Appeals of the State of New York in *People v. Sandstrom*, 279 N. Y. 523, 529, 18 N. E. (2d) 840, 842 (1939), likewise held that the salute had no religious significance, saying:

"Saluting the flag in no sense is an act of worship or a species of idolatry, nor does it constitute any approach to a religious observance. The flag has nothing to do with religion, and in all the history of this country it has stood for just the contrary, namely, the principle that people may worship as they please or need not worship at all."

In further support of the proposition that the act of saluting the flag is not a religious ceremony, we fail to find any basis in the Bible for a member of Jehovah's Witnesses or any other person who follows its teachings not saluting the flag. The national flag is not a "graven image" nor a "likeness of anything" either in heaven or in earth. It is merely the emblem or symbol of the national government. Not only is the flag not an "image" nor a "likeness", but the saluting of the flag is not bowing down to any "likeness" or serving any "graven image". As heretofore stated, saluting the flag is merely an act of respect to the government of the United States whereby the pupil acknowledges the *temporal* sovereignty of this nation. The salute is in no way an acknowledgment of *spiritual* sovereignty which members of Jehovah's Witnesses ascribe only to Jehovah.

The commandments of Jehovah, as set forth in the Bible, do not prohibit the saluting of a national flag but on the contrary approve of that practice. Citations to that

effect are too numerous to encumber this brief at any great length, but a few excerpts from the Bible will show that the precepts and commandments in the Bible approve of the salute:

“Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.”

St. Matthew 22:21. See also St. Mark 12:17 and St. Luke 20:25.

“Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.” Romans 13:7.

“And when ye come into an house, salute it.” St. Matthew 10:12.

“Honour all men. Love the brotherhood. Fear God. Honour the king.” I Peter 2:17.

The act of saluting the flag is only one of many ways in which a citizen may evidence his respect for the government. Every citizen stands at attention, and the men remove their hats, when the national anthem is played; yet such action can not be called a religious ceremony. The same respect is shown the American flag when it passes in a parade; yet that is not a religious rite.

When the Gobitis children and their father were in court, they arose and stood at attention at the opening and closing of court. The respondents did not claim that such act of respect to the Court and to the government it represents offended their religious beliefs; yet we see little difference, if any, between a person showing respect to the government by arising at the opening and adjourning of court and a person showing respect to the same government by saluting its flag at daily school exercises.

It should further be observed that while members of Jehovah's Witnesses endeavor to extend religious implications to a ceremony purely patriotic in design, they do not accord to others the religious freedom which they demand for themselves, claiming that there is no limit to which they may go when they think they are worshipping God. *Cantwell, et al. v. The State of Connecticut*, 126 Conn. 1, now before your Honorable Court, as of October Term, 1939, No. 632, on appeal from and certiorari to the Connecticut Supreme Court of Errors.

In saluting the national flag members of Jehovah's Witnesses, to paraphrase the above cited words of Christ, render and properly should render unto the government the respect and evidence of loyalty which is due to the government—an acknowledgment of the government's *temporal* sovereignty. The act of saluting the flag, however, does not prevent a pupil, no matter what his religious belief may be, from acknowledging the *spiritual* sovereignty of Almighty God by rendering unto God the things which are God's.

The District Court of Appeals of California was of the same opinion in *Hardwick v. Board of School Trustees*, 54 Cal. App. 696, 712, 205 Pac. 49, 55 (1921), when it said:

"We can conceive of no just or reasonable interpretation of the Bible, or any part thereof, which could, in the remotest way, inspire the thought that the teaching of patriotism or love of country is in anywise or in any degree or measure contrary to its teachings."

We, therefore, submit that refusal of the Gobitis children to salute the national flag at school exercises was not founded on a religious belief and their Bill of Complaint should have been dismissed.

Conclusion.

The regulation requiring pupils to salute the flag was lawfully adopted and the expulsion of the Gobitis children was within the power and authority of the School Board.

The refusal of the minor-respondents to salute the flag was not based on a religious belief, even though they mistakenly believed so to do was contrary to the precepts of the Bible, and, even if said refusal were based upon a religious belief, the enforcement of said regulation did not violate any right of the respondents under either federal or state constitutions.

We, therefore, submit that the decrees of the Courts below should be reversed.

Respectfully submitted,

JOSEPH W. HENDERSON,

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THOMAS F. MOUNT,

GEORGE M. BRODHEAD, JR.,

Attorneys for Petitioners.

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SUPREME COURT OF THE UNITED STATES

CLERK

OCTOBER TERM, 1939

No. 690

■
MINERSVILLE SCHOOL DISTRICT, BOARD OF
EDUCATION OF MINERSVILLE SCHOOL DIS-
TRICT, Consisting of DAVID I. JONES, DR. E. A.
VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL,
THOMAS B. EVANS and WILLIAM ZAPF, and
CHARLES E. ROUDABUSH, Superintendent of
MINERSVILLE PUBLIC SCHOOLS,

Petitioners;

v.

WALTER GOBITIS, Individually, and LILLIAN
GOBITIS and WILLIAM GOBITIS, Minors,
by WALTER GOBITIS, Their Next Friend,

Respondents.

■

On Writ of Certiorari to the
United States Circuit Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF

JOSEPH F. RUTHERFORD
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UNITED STATES SUPREME COURT

OCTOBER TERM, 1939

No. 690

MINERSVILLE SCHOOL DISTRICT, BOARD OF
EDUCATION OF MINERSVILLE SCHOOL DIS-
TRICT, Consisting of DAVID I. JONES, DR. E. A.
VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL,
THOMAS B. EVANS and WILLIAM ZAPF, and
CHARLES E. ROUDABUSH, Superintendent of
MINERSVILLE PUBLIC SCHOOLS,

Petitioners,

v.

WALTER GOBITIS, Individually, and LILLIAN
GOBITIS and WILLIAM GOBITIS, Minors,
by WALTER GOBITIS, Their Next Friend,
Respondents.

On Writ of Certiorari to the
United States Circuit Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF

Opinions Below

The opinion of the United States District Court for the
Eastern District of Pennsylvania after final hearing on
the merits is reported in 24 F. Supp. 271 (R. p. 120).*

The opinion of the United States Circuit Court of Ap-
peals for the Third Circuit is reported in 108 F. (2) 683
(R. p. 182).

*The opinion of the trial court reported in 21 F. Supp.
581 was on the motion to dismiss for want of jurisdiction,

Jurisdiction

Jurisdiction of the Supreme Court of the United States has been invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, paragraph 1, 43 Stat. 938 [28 USC 347 (a)].

The Statute

The statute and the regulation, the validity of which as construed and applied to respondents is here drawn in question by respondents, are, respectively:

The Act of May 18, 1911, P. L. 309, Art. XVI, paragraph 1607, as amended by the Act of May 29, 1931, P. L. 243, paragraph 37, and Act of May 20, 1937, P. L. 732 (24 P. S., paragraph 1551), provides that all public schools and private schools in the Commonwealth of Pennsylvania shall teach certain enumerated subjects including "the history of the United States and of Pennsylvania, civics, including loyalty to the State and National Government."

Claiming the above statute as authority, the school board made the following regulation:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly." (R. p. 45)

filed by defendants-petitioners. The trial court based jurisdiction upon Section 24 (1), Judicial Code, and on hearing all evidence found as a fact that the amount in controversy exceeded \$3,000 exclusive of interest and costs. Should it be contended here that the trial court did not have jurisdiction under Section 24 (1), Judicial Code, then we submit that the court did have jurisdiction under Section 24 (14), Judicial Code, conferring jurisdiction upon the district courts, without regard to amount, where only "civil rights" which are incapable of money valuation are involved. See *Hague v. C. I. O. et al.*, 307 U. S. 496, opinions of Mr. Justice Roberts and Mr. Justice Stone.

The Act of May 18, 1911, P. L. 309, Art. IV, paragraph 404, as amended by the Act of May 29, 1931, P. L. 243, paragraph 9 (24 P. S., paragraph 338), and Act of May 18, 1911, P. L. 309, Art. XIV, paragraph 1411 (24 P. S., paragraph 1383), were invoked by the school board as its alleged authority to expel the minor respondents.

Statement

WALTER GOBITIS and his two minor children, respondents herein, are native-born American citizens residing at Minersville, Pennsylvania; the two minor respondents attended the public school at Minersville, Pennsylvania.

In the year 1935 the Minersville School Board promulgated the following rule, to wit: "That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

DAILY CEREMONY

Each day at the opening of the school exercises the teachers and pupils of said school perform a certain ceremony in the following manner, to wit: Standing, each one places the hand over the breast and then with the right hand outstretched toward the flag specific words are repeated: "I pledge allegiance to my flag and the Republic for which it stands, one nation indivisible, with liberty and justice for all." (R. 92)

The form of salute is very like that of the Nazi régime in Germany.

While this ceremony was being performed the two Gobitis children stood in respectful silence but declined to participate in the ceremony mentioned. Their reason for not participating in the ceremony of saluting the flag was and is that they conscientiously believe that by so doing

they would violate the law of Almighty God, which infraction would in due time result in their loss of everlasting life. Their father had so taught them from infancy. (R. 51, 82, 83)

Walter Gobitis, the father, is a follower of Jesus Christ having made a solemn covenant to do the will of Almighty God. (R. 48, 49) He has taught his infant children to likewise follow Christ Jesus by being obedient to the law of Almighty God, as set forth in the Bible, and they too had entered into a covenant to obey the law of Almighty God whose name alone is Jehovah. (R. 50, 82) The two minor respondents were always diligent to obey every rule of the school except the rule relating to the formal saluting of the flag as above stated. Respondents willingly and diligently obey all the laws of the state when such laws do not conflict with the law of Almighty God.

The minor respondents were expelled from the school, and hence denied the privilege of attending the public school. This suit at equity was brought by respondents to enjoin the School Board from enforcing the rule as to the two infant respondents. The United States District Court granted the relief prayed.

FINDINGS AND OPINION

At the request of plaintiffs (respondents here) the trial court entered of record findings of fact and conclusions of law of which the following is a part, to wit:

"That plaintiffs are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement or covenant with Jehovah God, wherein they have consecrated themselves to do His will and to obey His commandments; they accept the Bible as the Word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Plaintiffs and all of Jehovah's Witnesses sincerely and honestly be-

lieve that the act of saluting a flag contravenes the law of Almighty God in this, to wit:

"(a) To salute a flag would be a violation of the Divine commandments stated in verses 3, 4 and 5 of the twentieth chapter of Exodus of the Bible, which read as follows, to wit:

'Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them . . .'

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

"(b) To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes are of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of Almighty God, and contravenes His express command as set forth in Holy Writ.

"That the said Lillian Gobitis and William Gobitis did not and were conscientiously unable to salute the flag because their religious beliefs and manner of worship forbade such salute, and the giving of such salute was in contravention of and in conflict with the commands of Almighty God, as they sincerely believed.

"That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the refusal by the said Lillian and William Gobitis to salute

the flag as required by the regulation of the Board of Education hereinbefore referred to.

"That the acts and conduct of defendants in excluding the minor plaintiffs from the public schools of Minersville cannot be justified under the police power of the state in that the failure and refusal of said minor plaintiffs to salute the national flag in accordance with the provisions of said regulation could not and did not in any way prejudice or imperil the public safety, health or morals or the property or the personal rights of their fellow citizens."

The finding of the District Court was for plaintiffs; appeal was taken to the United States Court of Appeals for the Third Circuit, which court affirmed the judgment of the District Court. The opinion of the United States District Court for the Eastern District of Pennsylvania is reported at 24 F. Supp. 271 (R. p. 120).

The opinion of the United States Circuit Court of Appeals for the Third Circuit is reported in 108 F. (2) 683 (R. p. 182).

IDENTIFICATION

The opinion filed in the Appellate Court for the purpose of identifying respondents quotes (R. 161) from Professor Eimer T. Clark's book *The Small Sects in America*, p. 58, 59. Manifestly Professor Clark was not fully advised with reference to the group with whom respondents are associated. For that reason, and that respondents may be properly identified, the following statement is made:

Jehovah's witnesses are not a sect, small or great. No man organized them. They have no human leader. They are a group of Christians who have covenanted to be obedient to the will of Almighty God, which requires them to give testimony to the name of Jehovah.

All persons who covenant to do the will of Almighty God, who do His will, and who worship and serve Him as commanded, are Jehovah's witnesses; and this is true without

regard to denomination. Jehovah's witnesses are not a recently organized group.

The apostle Paul, one of Jehovah's witnesses, sets forth at Hebrews 11:1-40 the names and a brief history of a number of Jehovah's witnesses, showing that Jehovah's witnesses have been on the earth for more than fifty centuries and long before any sects were known. The prophecy of Almighty God recorded centuries ago, and addressed to all persons who are in a covenant with Him and who sincerely serve Him by declaring His name, says: "Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

Christ Jesus is the Great Witness to the name and kingdom of Jehovah, the Almighty God. The Bible designates Him as "The Faithful and True Witness". (Revelation 1:5; Revelation 3:14) Before the Roman governor Jesus said that He came to earth to bear witness to the truth and that His followers must likewise be witnesses. (John 18:37; John 15:27) Recognizing the obligation upon all Christians or covenant people of God, the apostle Peter wrote that all such must follow in the footsteps of Christ Jesus, bearing witness to the truth. (1 Peter 2:21) Those who worship Jehovah God in spirit and in truth have committed to them the testimony concerning Jehovah, His name, and His kingdom, and hence all such are Jehovah's witnesses. (Revelation 12:17; Matthew 24:14) Such Christians are found in many denominations.

CHRISTIANITY means to be obedient to the law of Jehovah, the Almighty God. (Hebrews 10:7; Psalm 40:6-8) There is one Christianity. There are many religions practiced in defiance of God's law. The fundamental law of America declares that there shall be no discrimination between any of such nor any interference with regard to religion or with persons in their worship of Almighty God but that each shall worship according to the dictates of his own conscience as long as the exercise of such right does not endanger public safety or infringe personal rights.

Respondents are sincere Christians, conscientiously en-

deavoring to obey Almighty God and to worship Him in spirit and in truth, as commanded by Him.

CONCEDED

It is conceded by the petitioners in the instant case:

(1) That respondents are sincere, conscientious and honest in their belief that they are witnesses of Jehovah God, and have covenanted to obey God, and that they believe that their refusal to obey God's commandments will result disastrously to them.

(2) That the flag of the United States is a symbol of the government. (R. 94)

(3) That the respondents sincerely, conscientiously and honestly believe that their participation in the ceremony of saluting the flag, as required by the regulation of the Minersville public school, would violate the law of Almighty God, as set forth in the Bible.

CONSTITUTIONAL QUESTIONS

FIRST: The rule promulgated and enforced by the Minersville School Board compelling respondents to participate in the ceremony of saluting the flag and the act of said School Board in expelling the minor respondents from said school, because of refraining from saluting the flag, are violative of the rights guaranteed to respondents by Article One, Section Three, of the Constitution of Pennsylvania, to wit:

"That the general, great and essential principles of liberty and free government may be recognized and unalterably established, we declare that

"Sec. 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain

any ministry, against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship."

SECOND: The rule made by petitioners' School Board compelling the minor respondents to daily participate in the ceremony of saluting the flag, and enforced by expelling them from said school because of declining to salute the flag, violates the Fourteenth Amendment of the Constitution of the United States, to wit:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law."

FOR ARGUMENT

Point I

The vital question in the instant case is this: Shall the creature man be free to exercise his conscientious belief in God and his obedience to the law of Almighty God, the Creator, or shall the creature man be compelled to obey the law or rule of the State, which law of the State, as the creature conscientiously believes, is in direct conflict with the law of Almighty God?

In brief the issue may be stated thus:

The arbitrary totalitarian rule of the State versus full devotion and obedience to the ~~THEOCRATIC GOVERN-~~MENT or Kingdom of Jehovah God under Christ Jesus His anointed King.

This honorable court takes judicial notice that the Holy Bible is the authoritative Word or law of Almighty God,

given for man's instruction in righteousness. (2 Timothy 3:16, 17) The highest legal authorities have held that the law of God is supreme. (*Church v. United States*, 143 U. S. 457)

The law of God "is binding over all the globe, in all countries, at all times. No human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from the original." (*Blackstone Commentaries*, Chase 3d ed., pages 5-7)

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render homage that is due, and in a mode which commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object." (*Cooley's Constitutional Limitations*, 8th Ed., page 968)

The Commonwealth of Pennsylvania was established by men who recognized the supremacy of the law of Jehovah God. The preamble to that Constitution, and Section Three of Article One, definitely prove this point.

The original thirteen states of America unanimously adopted a Declaration, which we call the Declaration of Independence, and wherein are employed these words, to wit: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness."

Liberty necessarily embraces the right of the individual to exercise his conscience and that without interference. Chief Justice Gibson in *Commonwealth v. Leshner*, 17 S. & R. 155, in discussing the right of conscience within the meaning of the Pennsylvania Constitution, amongst other things said, that the right of conscience is: "A right to worship the Supreme Being according to the dictates of the heart. To adopt any creed or hold any opinion whatever on the subject of religion; and to do or forbear to do any act for conscience' sake, the doing or forbearing (to do) of which is not prejudicial to the public weal."

Mr. Justice Maris, in delivering the opinion of the trial court in the instant case said:

"In these words that eminent jurist [Justice Gibson] clearly stated the principle which underlies the Constitutional provision of the state, and which is one of the fundamental bases upon which our nation was founded, namely, that individuals have the right not only to entertain any religious belief but also to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, morals, property or personal rights of the people. . . .

"On the contrary, ~~that~~ regulation [of the School Board], although undoubtedly adopted from patriotic motives, appears to have become in this case a means for the persecution of children for conscience' sake. Our beloved flag, the emblem of religious liberty, apparently has been used as an instrument to impose a religious test as a condition of receiving the benefits of public education. And this has been done without any compelling necessity of public safety or welfare. . . . In these days when religious intolerance is again rearing its ugly head in other parts of the world it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachment." (R. 18, 21, 22)

As an example, totalitarian governments, such as the Hitler régime, deny Jehovah God and Christ Jesus and adopt the religion of Hitler. In obedience thereto all citizens in Germany are required to salute and to "heil" Hitler, and thereby impute to him supreme rulership, protection, worship and salvation.

A rule which compels school children to daily participate in a formal ceremony, to wit, placing the hand over the heart, stretching forth the hand toward the flag and at the same time repeating words of reverence and devotion, thereby recognizing the State as the sovereign, higher or supreme power, and attributing to the State protection and salvation, is a form of religious worship. Enforcing such rule against pupils or children is thereby compelling them to adopt and

practice a religion. Such rule is clearly in violation of Article One, Section Three, of the Constitution of Pennsylvania, and of the Fourteenth Amendment of the Constitution of the United States.

Compelling citizens to violate their conscience is one of the chief rules enforced by the Corporate or Totalitarian States. The corporate state is recognized and held as the superior or supreme power. It is called the "higher powers". In view of the tendency of the nations to return to the totalitarian rule, and therefore to adopt and practice religion in opposition to Jehovah God and His government, it is well and fitting to briefly review the history of compulsory religion, and which discloses a clear distinction between religion and the conscientious worship of Almighty God.

HISTORY

The first totalitarian government, which was organized shortly after the flood of Noah's day, adopted and practiced religion compelling men to defame the name of Almighty God. Nimrod, the ruler, set himself up as the higher or supreme power, above and before Almighty God. He compelled the people to recognize him as the state or sovereign ruler to be obeyed rather than Almighty God. His action was in defiance of Almighty God. (Genesis 10:8-10) Thereafter other totalitarian governments were organized, ruling the people of their respective nations, and each of such adopted and practiced a religion in defiance of Almighty God. Within those governments there were a few men who refused to bow down to or recognize any human power as supreme or above Almighty God; because of such refusal they suffered martyrdom. The Bible declares that such men were witnesses to the name of Almighty God, and hence are called JEHOVAH'S WITNESSES. Their names are set forth in the Scriptures in connection with their heroic deeds as examples for other witnesses to follow.—Hebrews 11:1-40; Hebrews 12:1, 2.

Jehovah God selected the descendants of Abraham and organized them as a people for His name to bear testimony

to His name and kingdom. God led them out from the nation of Egypt, a corporate or arbitrary State, and led them into the land of Canaan, where demon religion and totalitarian rule also prevailed. God warned the Israelites to shun the practice of religion of that people of Canaan because it would be a snare unto them. (Deuteronomy 7:4, 16) The Israelites were the covenant and typical people of Jehovah God. (Exodus 19:5) God gave to them His law to safeguard them from idolatry, that is, from the worship of creatures. (Galatians 3:19) The law of God never changes. (Malachi 3:6) All persons who have entered into a covenant with Jehovah God are subject to the same law that applied to the Israelites.—1 Corinthians 10:11; Romans 15:4.

God's law, given to and which applies to all of His covenant people, states: "Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them; for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me."—Exodus 20:3-5.

BASIS OF BELIEF

Petitioners, in support of the School Board rule, say: "While the members of Jehovah's witnesses may *mistakenly* believe that saluting the flag contravenes the law of God, as set forth in the twentieth chapter of Exodus, it does not follow that such pupil's refusal to salute the flag is based on a religious belief."

This raises the question, What is a religious belief? Based upon the Bible the proper definition of religion is this: A formal ceremony of reverence, adoration, devotion, or praise, practiced or indulged in by human creatures and directed toward, or bestowed upon, a higher power, real or supposed, thereby attributing to such higher power sovereignty, protection and salvation, is a religion. When such ceremony ignores the specific commandment of Almighty

God, that ceremony is idolatry.—Matthew 15:1-9; Acts 17:16-29; Revelation 19:10; Exodus 20:12; Isaiah 29:13; 44:8-10; John 4:23.

The foregoing Bible definition of religion is further supported by what follows: Paul, at one time a Pharisee and as such a practitioner of religion, said: "I am a Pharisee, [and] the son of a Pharisee." (Acts 23:6) When before King Agrippa he said: "After the most straitest sect of our religion I lived a Pharisee." (Acts 26:5) After Paul became a Christian and the apostle of Jesus Christ and one of Jehovah's witnesses, he wrote these words, to wit, recorded in the Bible at Galatians chapter one: "For ye have heard of my conversation in time past in the Jews' religion, how that beyond measure I persecuted the church of God, and wasted it; and profited in the Jews' religion above many my equals in mine own nation, being more exceedingly zealous of the traditions of my fathers." (Galatians 1:13,14) Religion is taught by the traditions of men. Christianity is taught by Jesus Christ, based entirely upon the Bible, which is the Word of God.—Matthew 15:1-9.

A rule which compels school children daily to participate in a formal ceremony by placing the hand over the heart (which is the symbol of loving devotion) and then extending the hand in a salute to a flag, a symbol of the State, and at the same time repeating formal words by which the State is recognized as the "Higher Power" and thereby attributing to the State protection and salvation, is compelling those children to adopt and practice a religion. If such children are in a covenant with Jehovah God to obey His will, that formal ceremony or practice is compelling such children to practice a religion and idolatry contrary to the commandments of Almighty God, which Divine commandments such children conscientiously believe and rely upon.

This honorable court has repeatedly held that the individual alone is privileged to determine what he shall or shall not believe. The law, therefore, does not attempt to settle differences of creeds and confessions, or to say that

any point or doctrine is too absurd to be believed. That rule was laid down more than one hundred years ago by the Pennsylvania courts in *Schriber v. Rapp*, 5 Watts 351, 363, 30 AM; Dec. 327.

As early as 1784 a like question was before the House of Delegates of the State of Virginia. Mr. Jefferson prepared a Bill: "For establishing religious freedom." In the preamble of that Act religious freedom is defined and in which the following appears:

"That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty, it is declared that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

This honorable court in *Reynolds v. United States*, 68 U. S. 145 (162), adopted that rule as the law of this country.

Will any court attempt to say that respondents *mistakenly* believe what is set forth in the twentieth chapter of Exodus in the Bible? The belief of respondents is not based upon conjecture or a myth. Respondents' belief is based strictly upon the Bible. The minor respondents from their infancy have been taught by their father to rely upon the Bible. In the testimony of respondent Lillian Gobitis she quotes this text from the Bible: "Little children, keep yourselves from idols." (1 John 5: 21) (R. 83) These children testified that they had covenanted to do God's will. A person who is in a covenant to obey the commandments of Almighty God, and who stubbornly refuses to obey, is declared guilty of idolatry. (1 Samuel 15: 22, 23) Respondents conscientiously believe these statements thus made in the Word of God, and they rely upon them as their guide.

THE FLAG

Is the saluting of the flag of any earthly government by a person who is in a covenant to do the will of God a form of religion, and which constitutes idolatry?

In *Halter v. Nebraska*, 205 U. S. 36-41, this honorable court held that the flag "is an emblem of sovereignty".

To many persons the saluting of a national flag means nothing. To a sincere person who believes in God and the Bible as His Word, and who is in a covenant to do His will, it means much. To such person "sovereignty" means the supreme authority or power. Many persons believe that "the higher powers", mentioned in the Bible at Romans thirteen, means the Sovereign State, but to the Christian this means only Jehovah God and Christ Jesus, His anointed King, The Higher Powers, to which all must be subject.

Concerning the flag *The Encyclopedia Americana*, Volume 11, page 316, says:

"The flag, like the cross, is sacred. . . . The rules and regulations relative to human attitude toward national standards use strong, expressive words, as, "Service to the Flag," . . . "Reverence for the Flag," "Devotion to the Flag."

Webster's International Dictionary defines the words above used as follows:

"SACRED, set apart by solemn religious ceremony."

"DEVOTION, a form of prayer or worship."

"REVERENCE, veneration, expressing reverent feeling, worship."

"SALUTE means to greet with a kiss, to bow and courtesy, the uncovering of the head, a clasp or wave of the hand or the like . . . to honor formally or with ceremonious recognition" (Century Dictionary, page 5321)

"To GREET with a sign or welcome, love or deference, as a bow and embrace, or a wave of the hand." (Webster)

It is conceded that the flag is a symbol of the State, an image which represents the State.

Under the word "image" this definition is given by Webster's Dictionary: "Image, in modern usage, commonly suggests religious veneration."

According to the Bible: "Bow down to a symbol or image" includes all postures or attitudes toward the image. Even a kiss. (See 1 Kings 19:18; Hosea 13:2; Job 31:25-27.)

Any token of reverence is a bowing down to. (See Webster's International Dictionary under the word *bow*.)

It appears from the recognized lexicographers that saluting the flag is a religious formalism. According to the Bible there cannot be the slightest doubt about it, because by such salute there is bestowed upon the image or thing, reverence, devotion, and a form of prayer or worship, and which thing or image or that which it represents is regarded as *sacred*.

Respondents sincerely believe the Word of God and conscientiously believe that saluting a flag is a violation of His law. Any willful disobedience to the divine law *to them* means complete or eternal destruction. "For Moses truly said unto the fathers, A prophet shall the Lord your God raise up unto you of your brethren, like unto me; him shall ye hear in all things, whatsoever he shall say unto you. And it shall come to pass, that every soul, which will not hear that prophet, shall be destroyed from among the people." —Acts 3:22, 23.

DIVINE PRECEDENTS

The conclusion or belief of respondents is not *their* interpretation of God's law. Jehovah God interprets His own law and records the meaning thereof. If they believe the Bible they cannot "mistakenly believe" that saluting a flag is religious. Relative to idolatry the following precedents are cited from the Bible, showing that respondents have a clear basis for their belief and action.

The totalitarian ruler of the empire of Persia promulgated a rule that all persons of the realm must bow down to Haman. Mordecai, a Jew, and one of the covenant people of God's typical nation (and therefore one of Jehovah's witnesses), refused to bow down to Haman, as it is written: 'Mordecai bowed not, nor did he reverence to Haman.' Because of his disobedience to the totalitarian ruler's command, preparation was made to hang Mordecai. Because of Mordecai's faithful devotion to Jehovah God he was saved from death.—Esther, chapters 3, 4, and 5.

Another divine example is that recorded in the prophecy of the third chapter of Daniel. The totalitarian ruler of Babylon made an image and set it up and issued a decree that at a given signal all persons should bow down to that image. Three Hebrews of the covenant people of God, held in bondage within the realm of Babylon, refused to bow down, preferring to obey the law of Almighty God, as recorded in Exodus the twentieth chapter, and take the consequences. For such refusal to bow they were cast into the fiery furnace with the intent to destroy them. Because of their faithfulness to Jehovah God He delivered them from that fiery furnace. They were therefore witnesses to Jehovah, bearing testimony to the supremacy of His name and to His power.

The Jewish nation was in a covenant to do the will of Jehovah God. They were His typical people. Zedekiah the king of that nation broke his covenant, made himself an arbitrary ruler, turned to idolatry by practicing religion of the heathen nations; led most of the people of Israel into idolatry, and for that reason the nation fell: "And they served their idols; which were a snare unto them."—Psalm 106:36; Ezekiel 21:26, 27.

Respondents are in a covenant to do the will of God and they sincerely and conscientiously believe that if they break that covenant they must suffer complete loss of life. Neither the government of Pennsylvania, nor the United States, or any other earthly government, can give life to man. Jehovah God is the fountain of life. (Psalm 36:9) 'Salvation be-

longeth to God alone.' (Psalm 3:8) Respondents thus sincerely believing have no alternative. If they would live they must obey God, because disobeying means their destruction. They are therefore commanded not to fear what man may do to them. To all covenant people the commandment is given: "And fear not them which kill the body, but are not able to kill the soul; but rather fear him which is also able to destroy both soul and body in hell."—Matthew 10:28.

Early settlers of America fled to this land because of arbitrary and oppressive rule, the enforcement of which violated their conscientious belief and God-given rights. The founders of the Commonwealth of Pennsylvania were of such and therefore were Jehovah's witnesses. This matter is well covered in the opinion of Mr. Justice Clark, in the instant case. (R. 176)

"The constitutional guaranty of religious liberty covers above all the two cardinal points of worship and doctrine, the two forms in which the uncontrollable facts of faith and opinion find their principal outward expression; it includes secondarily also customs, practices and ceremonies, which even where they do not form directly a part of worship, are prescribed by religion."

Freund, *Police Power*, p. 497.

The rule of the Minersville School Board promulgated and enforced in the instant case is a form of religion, and hence violative of the Constitution of Pennsylvania and of the Fourteenth Amendment of the Constitution of the United States. It denies the free exercise of conscience.

From Nimrod till now all totalitarian rulers have put the State above or before Almighty God. They have operated and ruled in defiance of Jehovah God's supreme law. Such nations in their order, and in the march of time, have perished.

In recent years the totalitarian method of rule has again raised its head with blighting results. In many of the European states the liberties of the people are gone. The policy of saluting flags and "heiling" men is a movement to com-

pel the people to recognize the State as before or superior to Almighty God.

If a person desires to salute the flag or to "heil" men, that is his privilege and no human power can properly interfere with his so doing. But there is a VAST DIFFERENCE between such a person and the one who has made a solemn covenant to be obedient to Almighty God, the breaking of which covenant is IDOLATRY. Respondents are in a covenant to be obedient to Almighty God; and this is conceded. They are conscientious in their belief and practice. That is conceded. In all good conscience they render obedience to the laws of the state, when such laws do not violate God's law. They fully recognize and believe that one who voluntarily breaks his covenant with Jehovah will suffer everlasting destruction.

Appropriate hereto is the language of Mr. Justice Maris in the trial court:

"In these days, when religious intolerance is again rearing its ugly head in other parts of the world, it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachment."

It is not the prerogative of any court to decide what a man shall or shall not conscientiously believe. Any contrary rule would destroy the liberty of conscience. It is the duty of the law-making bodies to stand by and fully support the Constitution, instead of trying to destroy what the Constitution guarantees.

CRUEL EXPERIMENT

The modern-day compulsory flag saluting as a daily exercise or ceremony in the public schools is clearly an experiment. The nation has existed for more than a century without any such enforced rule or even the thought thereof. To expel little children from school, and deny them the opportunity of an education because they refuse to violate their

conscience, is wrong and is cruel and unusual punishment. "No cruel experiment on any living creature shall be permitted in any public school of this Commonwealth."

24 Purdon's Pa. Stat. Ann. Sec. 1554

Well has Mr. Justice Clark, in the instant case, said,

"Compulsory flag saluting is designed to better secure the state by inculcating in its youthful citizens a love of country that will incline their hearts and minds to its more willing defense. That particular compulsion happens to be abhorrent to the particular love of God of the little girl and boy now seeking our protection. One conception or the other must yield. Which is required by our Constitution? We think the material and not the spiritual. Compulsion rather than protection should be sparingly exercised. Harm usually comes from doing rather than leaving undone, and refraining is generally not sacrilege. We do not find the essential relationship between infant patriotism and the martial spirit."

TOTALITARIAN ZEAL

Why this modern burning zeal compelling the saluting of flags and "heiling" of men? It is a movement in support of Satan's original challenge to Jehovah God that he, Satan, could turn all men against God. (Job 2:5) The Hitler totalitarian régime denounces Jehovah God, snatches children from their parents who worship Jehovah God; imprisons or kills the parents who persist in obeying Almighty God. The flag saluting rule by school children, adopted and enforced in the States of Pennsylvania, New Jersey and Massachusetts, are leading in that same direction. Children have been expelled from schools, taken away from their parents, and committed to reform schools, and thus the sanctity of the home broken up. Such is cruelty heaped upon citizens without any just cause or excuse. (See Appendix A and B.)

Mr. Justice Brandeis, in the *Olmstead* case (*Olmstead v. United States*, 277 U. S. 479), appropriate to this point

stated: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."

In the case of *Associated Press v. N. L. R. B.*, 301 U. S. 103, 141, 57 S. Ct. 650, 659, the following pertinent statement is made by Mr. Justice Sutherland: "Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship. . . . ? If so let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

GOD OR STATE

Since the day of Christ on the earth some nations have put God above the State. Authors of the Constitution of Pennsylvania and of the United States were in that class. Modern-day compulsory flag saluting is a retrograde movement to return to the totalitarian rule and to put the State above Jehovah God and ultimately to turn the nations and the people against Jehovah God.

More than fifty centuries ago God gave His Word that He will set up His kingdom, the THEOCRATIC GOVERNMENT through which all blessings shall come to mankind. (Genesis 22:18-22) He is certain to make good that promise. (Isaiah 46:11; Isaiah 55:11) God's Kingdom must be set up sometime. The physical facts in the light of His sure Word of prophecy strongly indicate that such time is at hand. Totalitarian rulers, of which Nimrod, Stalin and Hitler are examples, openly oppose the THEOCRATIC GOVERNMENT under Christ. All opposers to the THEOCRATIC GOVERNMENT Jehovah God denounces as wicked, and concerning which He says: "The Lord preserveth all them that love him; but all the wicked will he destroy."—Psalm 145:20.

By the decision of this honorable court in *Church v. United States*, supra, "this is a Christian nation"; which is an acknowledgment that the nation puts Almighty God above the State, and recognizes God's law as supreme. The Constitution of Pennsylvania likewise recognizes God as supreme and guarantees liberty of conscience and liberty of worship to every person. The law of compulsory flag saluting, as applied to persons who are in a covenant to do the will of God, such as respondents in the instant case, takes away the liberty of conscience and liberty to worship. Such law carried to its finality leads the nation to forget God and to return to the totalitarian rule. Concerning this very thing Jehovah God, the Supreme One, gives warning in these words: "The wicked shall be turned into hell, and all the nations that forget God."—Psalm 9:17.

In this day ambitious men put the State above Jehovah God, conspire against the Kingdom of God under Christ, and deny His supremacy. In that they are very unwise. Concerning such conspirators Jehovah God says: "He that sitteth in the heavens shall laugh; the Lord shall have them in derision. Then shall he speak unto them in his wrath, and vex them in his sore displeasure."—Psalm 2:4, 5.

In this connection, and concerning Christ Jesus, the Head of His Kingdom, God further says: "Yet have I set my king upon my holy hill of Zion. . . . Ask of me, and I shall give thee the nations for thine inheritance, and the uttermost parts of the earth for thy possession. Thou shalt break them with a rod of iron; thou shalt dash them in pieces like a potter's vessel" (Psalm 2:6, 8, 9) Then to the rulers of the nations, and particularly to those nations that claim to be Christian, Jehovah says: "Be wise now, therefore, O ye kings; be instructed, ye judges of the earth. Serve the Lord with fear, and rejoice with trembling. Kiss [salute, worship] the Son [Christ Jesus, the Theocratic King], lest he be angry, and ye perish from the way, when his wrath is kindled but a little. Blessed are all they that put their trust in him."—Psalm 2:10-12.

Point II

The rule made and enforced by petitioners compelling children and teachers to indulge in a ceremony of saluting the flag, is violative of the Fourteenth Amendment of the Constitution of the United States of America,

to wit: "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law." That rule certainly abridges the privileges of the respondents and deprives them of liberty and property without due process of law.

Walter Gobitis testified that he had taught his children from infancy to believe the Bible, and to obey God's commandments. The divine law commands that all persons in a covenant with Jehovah God must teach the law of Jehovah God to their children, as it is written: "And what nation is there so great, that hath statutes and judgments so righteous as all this law, which I set before you this day! Only take heed to thyself, and keep thy soul diligently, lest thou forget the things which thine eyes have seen, and lest they depart from thy heart all the days of thy life; but teach them thy sons, and thy sons' sons." (Deuteronomy 4:8,9) Again, it is written in the Word of Almighty God: "And, ye fathers, provoke not your children to wrath; but bring them up in the nurture and admonition of the Lord." (Ephesians 6:4) To the children God gives this commandment: "Honour thy father and thy mother."—Exodus 20:12.

Appropriate to the divine rule above announced this honorable court in the case of *Meyer v. Nebraska*, 262 U. S.

390, in considering the liberty guaranteed to the citizen said:

"While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract; to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. . . .

"The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. . . .

"Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all the States, including Nebraska, enforce this obligation by compulsory laws."

Respondent Walter Gobitis has given heed to the Divine law and he has taught his minor children, Lillian and William, to be obedient to the Divine commandments. The Minersville School Board, by the rule promulgated and enforced, compels the father Walter Gobitis to refrain from teaching his children to be obedient to the Divine law, or otherwise to deny his children the right to have an education in the public schools. Thus respondents are deprived of their liberty and property without due process of law.

In the case of *Pierce v. Society of Sisters*, 268 U. S. 510, this Court said:

"Under the doctrine of *Meyer v. Nebraska*, 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children . . . the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." (Pages 534-535)

LOYALTY

Should not all citizens be loyal to the country in which they live? Emphatically yes. Jesus stated the correct rule, to wit: "Render to Caesar the things that are Caesar's, and to God the things that are God's." (Mark 12:17) Caesar was the totalitarian, arbitrary ruler representing the government of Rome. He stood for the State. The Lord Jesus declared that everything to which the State was entitled, such as payment of taxes, should be rendered unto the State. He then added that everything to which God is entitled should be rendered unto God. Clearly that means that God is supreme, that His law is above the law of the State, and that laws of the State that are in harmony with God's law should be readily obeyed. Respondents follow that rule. They are diligent to obey every law of the State not in conflict with the law of Almighty God. Any rule or law enacted in the State of Pennsylvania that is contrary to God's law is void.

FALSE PATRIOTISM OR RIGHTEOUSNESS?

Petitioners claim that the purpose of saluting the flag is to "Instil in the children patriotism and love of country." But why limit that compulsory rule to teachers and pupils of the public schools? Why not require that same ceremony in all the schools? Why not apply the same rule to all officials of the Nation and State, from the President and the members of Congress down to the very least and humblest citizen? The general answer would be that the enforcement of such a rule is ridiculous and nonsensical. The opinion of the United States Circuit Court of Appeals (R. 157) quotes appropriately the following:

"Another form that false patriotism frequently takes is so-called 'Flag-worship'—blind and excessive adulation of the Flag as an emblem or image,—super-punctiliousness and meticulousness in displaying and saluting the Flag—without intelligent and sincere understanding and appreciation of the ideals and institutions it symbolizes. This, of course, is but a form of idolatry—a sort of 'glorified idolatry', so to speak. When patriotism assumes this form it is nonsensical and makes the 'patriot' ridiculous."

Chap. 14, "Patriotism of the Flag," Moss, *The Flag of the United States, Its History and Symbolism*, pp. 85-86.

Summary

Respondents herein are God-fearing, conscientiously endeavoring to obey the law of Almighty God. The minor respondents, by the law of Pennsylvania, are required to attend a public school.

The Minersville School Board rule would compel respondents to violate their conscience and to violate their understanding of God's law by indulging in the religious ceremony of saluting the flag.

Because of that refusal the minor respondents are punished by being expelled from school, and thereby denied the ~~privilege~~ of a public-school education and denied an opportunity of obeying the law concerning attendance at public schools.

The father of these minor children is thereby deprived of his liberty and property without due process of law.

God-fearing men of Pennsylvania who wrote the Bill of Rights of that Commonwealth said: "We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and publish this Constitution." Thus those faithful men bore testimony to the name of Jehovah God, and therefore were **JEHOVAH'S WITNESSES**.

Compare their words of sincere and conscientious devotion to Jehovah God with the words of the modern-day Pennsylvania legislators and school boards, who say that school teachers and children must daily perform a religious ceremony of saluting the flag or suffer punishment for declining to do so.

It is therefore easy to see that the great issue here is **THE CORPORATE STATE** versus **ALMIGHTY GOD**. Shall America uphold the principles of liberty of conscience and freedom of worship of Almighty God as guaranteed by the Constitution of Pennsylvania and of the United States, or shall the nation now turn its back upon

these constitutional guarantees and follow the totalitarian rule of putting the State above Almighty God?

THE STATE VS. GOD, *which is the precise issue to be determined in the instant case, has never before been presented to this honorable court.*

The cases involving compulsory flag saluting, decided by the State courts, have made no distinction between persons in general and those persons who are in a covenant to do the will of Almighty God. The State courts that have upheld the rule of compulsory saluting of the flag have elected to determine what is the proper interpretation of the Scriptures, and assuming that responsibility they have said: "The act of saluting the flag of the United States is by no stretch of imagination a religious rite." * In thus attempting to interpret the Scriptures the State courts have exceeded their authority.

It is not the prerogative of any human power or authority to interpret the Scriptures. It is written, in 2 Peter 1: 20, that 'no scripture is of private interpretation'. God alone interprets the Scriptures, and those who are able to read, and who believe the Bible, are governed by what it says. Counsel for petitioners insist that respondents have "mistakenly interpreted the Scriptures". In answer to that we say that respondents have made NO ATTEMPT to interpret the Scriptures. They sincerely and conscientiously believe what is stated in God's Word.

Almighty God says concerning images and symbols: "Thou shalt not bow down to them." That commandment is not subject to interpretation by human creatures, be they judges of courts of religious experts. No doubt is

* *Nichols v. Lynn*, 7 N.E. (2) 577, 580; *People v. Sandstrom*, 279 N. Y. 523, 529-30; 18 N.E. (2) 840, 842; *Leoles v. Landers*, 184 Ga. 585; 192 S.E. 218, 222; *Hering v. State Board*, 117 N. J. L. 455; 189 Atl. 629; *Gabrielli v. Knickerbocker*, 12 Cal. (2) 85; 82 Pac. (2) 391.

left in the mind as to what is the meaning of those words, because God himself has given the plain interpretation thereof.

The sole question, therefore, is: Does the individual sincerely and conscientiously believe what God has said? And if so, then that individual alone has the right, under the Constitution, to choose to obey his conscience, based upon the Scriptures and instructed by the Scriptures.

Men who are NOT in a covenant to do the will of God do attempt to interpret the Scriptures; but not so with God's covenant people. For the purpose of guiding men who desire to follow in righteousness the Lord God has caused to be recorded numerous instances in the Bible specifically interpreting the meaning of Exodus 20:2-5. In reply to what the State courts and counsel for petitioners say about "mistaken interpretation" we refer to the following divine interpretation:

THE STATE required everyone to salute or bow down to Haman. Mordecai, a man in a covenant with God, refused to obey that order. Preparation was made to hang Mordecai. Because of his faithful obedience to his covenant with Almighty God Jehovah saved him from the gallows:—Esther chapters 3, 4, 5.

THE STATE, at the instance of all the political officials, made a law that no man be permitted to present a petition (prayer) to any one save the king. That rule prohibited Daniel, a covenant man of God, from praying to Almighty God. Daniel refused to obey that rule, but publicly bowed down and prayed to Jehovah God. For his offense against the State he was cast into a den of lions. Because of Daniel's faithfulness to his covenant the Almighty God Jehovah sent his angels from heaven who delivered him from the lions, unscathed and unhurt. (Daniel chapter 6)

THE STATE made a law that every man, at a given signal, should bow down to a certain image. Meshach, Shadrach and Abed-nego, they being of the covenant people of

God, refused to bow down, choosing to obey God rather than THE STATE. For their offense they were cast into a red-hot furnace. Because of their faithfulness to Almighty God and their covenant God delivered them from the furnace unsinged. (Daniel chapter 3) They did not need to interpret the Scriptures. They only needed to obey. They trusted in the supreme power of the Almighty.

The prophet Jeremiah stood before THE STATE charged with treason because he had delivered God's message of warning to the rulers. His lifeblood was demanded. He remained faithful and true to God, reminding his accusers that if he was put to death his innocent blood would be upon their heads. Because of his continued faithfulness Almighty God saved him from death.

Another prophet, Urijah, also stood before the same authority charged with a like offense, and his lifeblood was demanded. He became fearful and fled, failing to trust in Jehovah God. He was apprehended and put to death. (Jeremiah chapter 26)

Why are these things recorded in the Bible? God caused these instances to be recorded for the guidance of His covenant people until the world shall end; and concerning this it is written in the Scriptures: "Now all these things happened unto them for ensamples; and they are written for our admonition, upon whom the ends of the world are come." (1 Corinthians 10: 11) "For whatsoever things were written aforetime were written for our learning, that we through patience and comfort of the scriptures might have hope." (Romans 15: 4) These words need no human interpretation.

Paul, at one time a member of the Supreme Court at Jerusalem, according to his own testimony, practiced a religion that led him to persecute the followers of Christ Jesus. (Acts 9: 1-22; Galatians 1: 1-16) Paul became a Christian and therefore suffered much persecution because of his faithful devotion to the Lord, and proved himself a faithful witness of Jehovah. Under inspiration from the Lord he recorded at the eleventh chapter of Hebrews a long

list of faithful men who had covenanted to do the will of God, and who suffered because of their faithful obedience to that covenant. All of those men refused to obey the law of the State that violated God's law recorded at Exodus twenty. This they did conscientiously. All of those men received the approval of Almighty God because of their faithfulness. Recounting their sufferings it is written in the Scriptures concerning them: "Of whom the world was not worthy."³ All of these received a good report through faith. They had God's approval, and thus God interpreted Exodus 20:3-5. (Hebrews 11th chapter)

Attention is called to these instances recorded in the Bible for the purpose of showing that respondents have made no attempt to interpret the Scriptures, but have followed the lead of the faithful men of God who have gone before. They are conscientious and are faithful and diligent to obey Almighty God. Only the STATE COURTS HAVE ATTEMPTED TO INTERPRET THE SCRIPTURES IN THIS MATTER, which according to the fundamental law of the state and the supreme law of Almighty God, THEY HAVE NO RIGHT TO DO.

The covenant people of Almighty God have pledged their lives to Him. All such who remain faithful to their covenant are properly designated Jehovah's witnesses. A violation of that covenant means to them loss of everything. Therefore they have no alternative. They must obey God. If the STATE and its courts insist upon interpreting God's Word and inflicting punishment upon those who conscientiously continue to obey God's law, then THE STATE must bear the responsibility before Almighty God.

For the covenant people to obey Almighty God means to them everlasting life. They desire to live, regardless of the suffering it may cost them. This rule is not limited to any sect, It applies to all who have made a covenant with Almighty God whether that person be Catholic, Protestant, Jew or Gentile, bond or free.

Jehovah's witnesses are here asking only that they may be permitted to enjoy the liberty and freedom granted to all by the fundamental law of the land. All persons who are sincere in their obedience to Almighty God trust Him implicitly as to the result. Confidently we ask this Court to affirm the decision of the District Court and the Circuit Court of Appeals.

JOSEPH F. RUTHERFORD

HAYDEN COVINGTON

Attorneys for Respondents

HARRY M. McCAUGHEY

Of Counsel

APPENDIX A

COMPULSORY FLAG SALUTING AND ITS RESULTS

Expulsions from the Public Schools

Children have been denied the right to attend public schools in the following states:

California	New York
Florida	Ohio
Georgia	Oklahoma
Maryland	Pennsylvania
Massachusetts	Texas
New Jersey	Washington*

Additional Punishments Inflicted on Children and Parents

Nemacolin, Pa. JOHN KUROLA, age 14. Father arrested and fined on truancy charge, to wit, for failure to send his child to school after he had been expelled from school. The father had sent the boy regularly to school for quite a period of time, but each day the boy would be sent home.

Grindstone, Pa. STANLEY BRACHNA, age 12. Was knocked around by teacher; thrown against a desk; hit; teacher tried to force him to salute by holding up his hand.

Nemacolin, Pa. LOUIS WILKOVICH, age 11. Whipped and sent home from school. Parents arrested under the truancy law.

Nemacolin, Pa. MIKE KOROLY, age 9. Whipped. Tried to force him to salute.

Royal, Pa. CATHERINE KURNAVA, age 8. Tried to force her to salute.

New Ringgold, Pa. PAUL JONES, age 10. Punished by teacher. Had to stand for the entire day.

Canonsburg, Pa. ANNA PRINOS, age 13. Whipped and choked by principal. Sent home with great welts on back from beatings. No Canonsburg doctor would testify in court.

* Many other states now join the list. See U.S. C. C. A. opinion, *Minersville, etc., v. Gobitis*, 108 F. (2) 683, first sentence (R. p. 155).

as to her condition. Pittsburgh physician had to be secured. Action brought against the teacher, but under Pennsylvania law malice must be proved, and apparently teacher is not considered malicious, no matter how hard the rod is applied.

Canonsburg, Pa. PAULINE PRINOS, age 12. Whipped. Threatened by principal with being sent to reform school.

Canonsburg, Pa. RUTH GEORGE, age 13. Beaten and taunted by principal. Needed medical aid. Called "anarchist" by teacher.

Canonsburg, Pa. TIMOTHY GEORGE, age 11. Beaten by teacher. Carried marks of the beating for a week. Threatened with incarceration in reform school. Child's health was upset so he could not eat and became hysterical.

Secaucus, N. J. JOHN and ELLA HERING. These parents were charged under the truancy law with failure to send children to school after they had been expelled. Proof given in court that the children were receiving equivalent education in a private school. Nevertheless parents were each fined five dollars.

Atlanta, Ga. GEORGE LEYLES. His daughter Dorothy was expelled from school. His place of business was boycotted and picketed by the Ku Klux Klan. He was hounded by newspapers and various organizations until his business was ruined; threatened with deportation.

Bondsville, Mass. IGNACE OPIELOUSKI. His three children were sentenced to county reform school for failure to salute the flag. Cases were nolle prossed by district attorney when appealed. Father was fined forty dollars for failure to send them to school. Children now in school, but, nevertheless, the fine was affirmed by the Superior Court on appeal.

Chicago, Ill. MARY SCHLORCHETKA. Fined \$200 or given six months in jail for refusal to salute the flag at the command of an irate judge in court. Sentence reversed by the Appellate Court.

New Weston, Ohio. JONAS E. JENKINS. His business was boycotted; his children were threatened with incar-

ceration by juvenile officials; had to move to another community.

Ansonia, Ohio. Several children slapped, taunted, and insulted in school.

Teachers Discharged

Canonsburg, Pa. GRACE ESTEP.

Henry Clay Township, Pa. IRA BIRD.

Lynn, Mass. CORA M. FOSTER.

Quincy, Mass. ELIZABETH M. GRAHAM.

Monessen, Pa.

Jehovah's witnesses established a private school in this town; rented a building, and put a teacher in charge. Eighteen pupils attend. Mayor James C. Gold, of Monessen, decided it was a "communist" school. Had the chief of police padlock it, and held the teacher incommunicado two days. Took as evidence of its "communistic" character one song book, a Bible, two small United States flags, and a book explaining the Bible, entitled "The Harp of God". The song book taken is entitled "Songs of Praise to JEHOVAH". The school was opened and locked three different times; finally held open through securing an injunction against the mayor and chief of police. After the injunction was secured bricks were thrown through the school windows on three different occasions. A petition was circulated throughout the community, protesting against the unlawful acts of the mayor and police; 146 of those engaged in circulating that petition were thrown into jail, their petitions taken from them, and they were found guilty of disorderly conduct in Mayor Gold's court, without any semblance of a trial.

Gates, Pa.

Jehovah's witnesses established a private school, which houses 38 pupils. Application was made to the court for a corporation charter to hold title to the school property. This was refused because of prejudice on account of the flag-salute situation. The children attending this school were expelled from the public schools; their parents were jailed

for failure to send them to school; and, additionally, the law refuses the parents a charter whereby they can provide for their children private schooling as required by law.

Washington State

ELLIOT CHILDREN were charged with being delinquents, and a petition was filed in court to remove them from their parents. The court overruled the petition.

Other Cases

In various places there has been mob action; beatings by police officials; loss of work by parents; parents taken off "relief" list; boycotting; all on account of children's refusal to salute the flag. The number of expulsions from school now run into the hundreds.

APPENDIX B

PART ONE

Extract from "The German Civil Code: Translated and Annotated by Chung Hui Wang, D.C.L.; Member of the International Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre zu Berlin; Member of the Société de Legislation Comparée; London: Stevens and Sons, Limited, Law Publishers, 1907."

Par. 1666. "If the moral or physical welfare of a child is endangered by the fact that the father abuses his right to take care of the child's person, or neglects the child, or is guilty of any dishonest or immoral conduct, the Guardianship Court shall take the necessary measures to avert the danger. The Guardianship Court may, e.g., order the child, for the purpose of his education, to be sent to a suitable family or an institution of education, or a reformatory?..."

Par. 1909. "A curator is appointed for a person under parental power or guardianship, to take charge of the af-

fairs of which the parent or guardian is prevented from taking charge . . . ”

PART TWO

Extract from “Deutsche Justiz” [Official Gazette of the German Administration of Law; Bulletin of the Department of Justice] Berlin, November 26, 1937; Ausgabe A; No. 47; page 1857; [Translation supplied to the respondents by Dr. Anton-Hermann Chroust; Ph.D., Munich; J.U.D. Erlangen; S.J.D., Harvard; Formerly Sub-Judge (Referendar) in Bavaria; Formerly Research Fellow at the Law School of Harvard University]

Note: The following is a complete translation of the above-described periodical's report of the case in question. The matter is arranged in the same order as it appears in the report.

PARENTS WHO USE THEIR EDUCATIONAL INFLUENCE ON THEIR CHILDREN IN SUCH A MANNER AS TO BRING THESE CHILDREN INTO OPEN CONFLICT WITH THE NATIONAL SOCIALISTIC IDEA OF COMMUNITY ABUSE THEIR RIGHT OF GUARDIANSHIP.

DISTRICT COURT, WALDENBURG,
SILESIA, NOVEMBER 2, 1937,
— VIII, 193 —

Excerpts from the *ratio decidendi*:

The parents of the children belong to the sect of International Bible Students. Like all Bible Students, this sect is concerned not only with purely religious matters but also deduce from their religious premises the necessity to deny the simplest and most self-evident duties towards the State and the German people. Obstinate they refuse, even on solemn occasions, to take part in the German salute, and by doing so express their disagreement with the principles

upon which the new German state rests. Purposey they put themselves outside of the German community. The father admits openly that even in case of war he would refuse to take up arms. The philosophy which the parents espouse is inimical to the will to resist by armed force, and, therefore, capable of impairing the foundations of the State.

This conviction of the parents is also transmitted to the children. Of course, the parents have denied this during the hearing; they have declared that they did not influence the children's general view of life (*Weltanschauung*). But such an attitude, as encouraged by the Bible Societies, dominates the whole of life. It is a matter of practical experience that such a philosophy of life, expressing itself daily in the narrow family circle, influences the children, even though it is not put in express words. Indubitable evidence has also been introduced to prove that in this case such active influence actually exists. The father, when admonished by the court, had to admit that he had already been penalized for not sending his children to National Socialistic festivals. The father, in this connection, also made the plausible statement that his children did not care for such meetings, and that they themselves had expressed the desire to be excused from going. This statement only goes to prove the strength of the influence which actually originates from the parents; and, furthermore, the degree to which the children have already succumbed to such influence.

This statement of fact compels us to the following juristic considerations:

If parents through their own example teach their children a philosophy of life which puts them into an irreconcilable opposition to those ideas to which the overwhelming majority of the German people adheres, then this constitutes an abuse of the right of guardianship as expressed in Par. 1666 of the Civil Code. This abuse of the power of guardianship endangers to the highest degree the welfare of the children, inasmuch as it ultimately leads to a state of mind through which the children will some day find that they have cut themselves off from the rest of the German people. To avert such danger the Guardianship Court has

to take the necessary steps according to Par. 1666 of the Civil Code. A permanent remedy in this respect can only be found if the right of guardianship over the person is withdrawn from the parents, because only through such withdrawal we can be sure that the evil educational influence of the parents is eliminated and broken.

In accordance with the opinion of the Guardianship Court, the following must be admitted: the law, as a National Socialistic form of State order, entrusts German parents with the right to educate only on condition that this right is exercised in a manner which the people and the State have a right to expect—a condition which is not specifically expressed by the law but which must be considered as something self-evident. Here in particular we have to remember that all education must have as its ideal aim the creation of the belief and conviction in children that they are brothers forming a great nation; that they are molded into the great union of the German people together with all other German comrades through the sameness of their fundamental ideas. Whoever in the exercise of a purely formal right to educate his children evokes in those children views which must bring them ultimately into conflict with the German community ideal does not comply with those self-evident presuppositions. Therefore, out of purely general considerations the right to educate must be denied to such a person without the necessity of having to refer to the implicit presuppositions of Par. 1666 of the Civil Code.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 

890

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF
MINERSVILLE SCHOOL DISTRICT, consisting of DAVID I.
JONES, DR. E. A. VALIBUS, •CLAUDE L. PRICE, DR. T. J.
MCGURL, THOMAS B. EVANS and WILLIAM ZAPP and
• CHARLES E. ROUDABUSH, Superintendent of Minersville
Public Schools,

Defendants-Petitioners,

vs.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS and
WILLIAM GOBITIS, Minors, by WALTER GOBITIS, Their
Next Friend,

Plaintiffs-Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE

GEORGE K. GARDNER,
of the Massachusetts Bar.

ARTHUR GARFIELD HAYS,
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WILLIAM G. FENNELL,
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of the New York Bar.

ALEXANDER H. FREY,
of the Pennsylvania Bar.

FOR AMERICAN CIVIL LIBERTIES UNION

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939

No. 691

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF
MINERSVILLE SCHOOL DISTRICT, consisting of DAVID I.
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Next Friend, *Plaintiffs-Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE THIRD CIRCUIT.

**BRIEF FOR AMERICAN CIVIL LIBERTIES UNION,
AMICUS CURIAE**

Preliminary Statement.

The American Civil Liberties Union is a non-partisan, non-sectarian organization, national in scope, with members in Pennsylvania, whose purpose is to defend fundamental American civil liberties as guaranteed in the Constitution of the United States, particularly in the Bill of Rights, wherever, whenever, and by whomever attacked.

None of the signers of this brief are members of Jehovah's Witnesses, nor do they share the religious conviction that saluting the flag violates the law of God. But they and the Union consider that the issues raised by the record in this case, and the still graver issues which lie just beyond it, are of vital importance not only to the religious freedom of individual American citizens, but to the sources of that deep affection and confidence from which alone can spring an abiding popular loyalty to the American system of government and the American flag.

The Union accordingly files this brief in support of the decision of the District Court for the Eastern Pennsylvania District (R. 15-27; 120-127; 21 F. Supp. 581; 24 F. Supp. 271) affirmed unanimously by the Circuit Court of Appeals for the Third Circuit (R. 155; 108 Fed. (2nd) 683); and submits that these Courts rightly decided the issues of law raised in this case.

The Issues.

This case comes before this Court on Writ of Certiorari from the United States Circuit Court of Appeals for the Third Circuit.

The questions involved are (1) did the petitioners, as a school board, have the right to expel the minor respondents from the public schools of the District for failure to salute the flag on religious grounds? and (2) did the petitioners, as a school board, have the right to impose as a condition to the minor respondents' continued attendance at school a requirement that they salute the flag?

Both of these questions the Court below answered in the negative. The American Civil Liberties Union submits that this answer was correct.

Jurisdiction.

No error as to the assumption of jurisdiction of the District Court has been specified by the petitioner (Pet. B.* p. 14) and consequently this point is not in issue before this Court. Nevertheless, the District Court found that the matter in controversy exceeds the sum or value of \$3,000 (R. 123-4) (*Judicial Code*, Sec. 24(1)). Although the District Court did not so hold, it seems that it also had jurisdiction under *Judicial Code*, Sec. 24(14) (*Hague v. Committee for Industrial Organization*, 307 U. S. 496).

Statement of Case.

This suit began as a bill in equity (R. 4-12) filed in the United States District Court for the Eastern Pennsylvania District, by a father and his two minor children (the respondents herein) whereby they sought to enjoin the authorities of the Minersville School District, (1) from excluding the two minor plaintiffs from the public schools of said District, and (2) from requiring the two minor plaintiffs to salute the flag of the United States of America as a condition of their continued attendance at said schools. The defendants filed a motion to dismiss (R. 13-14), which the District Court overruled in an opinion (R. 15-27; 21 F. Supp. 581). The defendants then answered (R. 28-38), and the case was tried upon evidence (R. 41-104), after which the court found the facts substantially as alleged by the plaintiffs (R. 105-120), filed a further opinion summing up its conclusions (R. 120-127; 24 F. Supp. 271), and made a decree (R. 128-129) granting the relief sought. The defendants appealed to the United States Circuit Court of Appeals for the Third Circuit (R.

* Petitioners' Brief will be referred to as "Pet. B. p. "; Record, as "R. ".

131-149), and that Court in an opinion (R. 155; 108 Fed. (2nd) 683) affirmed the decree of the District Court.

The facts of the case are simple. The minor respondents, William and Lillian Gobitis, children of the respondent, Walter Gobitis, are residents of the Minersville School District of Minersville, Pennsylvania, and have resided there for many years. The petitioners are the duly elected and acting Board of Education of such School District and have the management and control of the Minersville Public Schools (Findings, R. 113-114). The Statutes of Pennsylvania¹ require that the minor respondents must attend public schools, or obtain equivalent private instruction, until they are 18 years old (*Purdon's Pennsylvania Statutes, Title 24, Sec. 1421*, as amended July 1, 1937, by 1937 Laws of the General Assembly of Pennsylvania, No. 478, Section 4). Pursuant to these provisions, Lillian is required to attend until November 2, 1941, and William until September 17, 1943. The Statutes of Pennsylvania moreover afford a right to the minor respondents to attend the Minersville Public Schools until they have either completed a four-year high school course or are 21 years old respectively (*Op. Cit., Title 24, Secs. 331, 1371, 1581, 1582*). The instruction prescribed for the minor respondents by the Statute includes "civics, including loyalty to the State and National Government" (*Op. Cit., Title 24, Sec. 1551*). Purporting to act pursuant to the latter statute, the Board of Education of the Minersville Public Schools on November 6, 1935, adopted a school regulation requiring the Superintendent of the Minersville Public Schools to demand "that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag

¹ See Appendix A.

shall be regarded as an act of insubordination and shall be dealt with accordingly" (R. 114-117).

It should here be noted that for "insubordination or other bad conduct" pupils may be proceeded against in the Juvenile Courts of Pennsylvania as delinquents (*Purdon's Pennsylvania Statutes, Title 24, Sec. 1477*) and, in the Court's discretion, may be committed to the custody of some family, not their parents, or of a public institutional school (*Op. Cit., Title 11, Secs. 244, 246, 250*).

The practice in the Minersville Public Schools appears to be for the teacher and pupils to rise at the opening of school, place their right hands on their breasts and speak the following words: "I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all." While the words of the pledge are being spoken, it is customary for the teacher and pupils to extend their right hand so as to salute the flag.

The respondents are members of an unincorporated association of Christian people designated as Jehovah's Witnesses. Each of the respondents as a member of this group "has covenanted with Jehovah God to obey the commandments of God and to preach the gospel of the Kingdom as contained in the Bible" (Petitioners' Finding 9, R. 114-117). The minor respondents failed to salute the national flag at the daily exercises of the Minersville Public Schools because, as found by the District Court (R. 106-108), they believed the act of saluting a flag contravenes the law of God as written in the Bible. That finding is here set forth in full:

"7. That plaintiffs are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement

or covenant with Jehovah God, wherein they have consecrated themselves to do His will and to obey His commandments; they accept the Bible as the Word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Plaintiffs and all of Jehovah's Witnesses sincerely and honestly believe that the act of saluting a flag contravenes the law of Almighty God in this, to wit:

- (a) To salute a flag would be a violation of the Divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, which reads as follows, to wit:

"Thou shalt have no other gods before me. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them * * *",

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

- (b) To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes are of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of Almighty God, and contravenes His express command as set forth in Holy Writ.

Affirmed as to plaintiffs. M."

On November 6, 1935, the minor respondents were expelled from the public schools "for this act of insubordina-

tion, to wit, failure to salute the flag in our school exercises"; and since that time they have not attended the Minersville Public Schools. Lillian has instead attended, from late December, 1935, to May, 1937, the Jones Kingdom School at Andreas, Pennsylvania; and subsequent to September, 1937, the Pottsville Business College; while William has been attending the Jones Kingdom School (R. 116-117).

The District Court also found that the respondents are American citizens who honor and respect their country and state and willingly obey its laws, but that they nevertheless believe that their first and highest duty is to God and His commandments and laws, as they understand them (R. 108).

Summary of Argument.

The decree of the District Court declares (R. 128):

That the regulation of the Board of Education of the Minersville Public Schools adopted on the sixth day of November, A. D., 1935, which said regulation is in words and figures as follows, to wit:

"That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly."

as applied to the minor complainants as a condition of their right to attend the Minersville Public Schools is null and void in that it deprives them of liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Following the language of this decree, we shall submit argument in support of these three propositions:

First: The right to entertain the belief, to adhere to the principle, and to teach the doctrine, that the act of saluting a flag contravenes the law of Almighty God is a part of the liberty referred to in the Fourteenth Amendment to the Constitution of the United States.

Second: The State of Pennsylvania deprived the respondents of this liberty by requiring them to surrender it as a condition of the minor respondents' continued attendance at the Minersville Public Schools.

Third: The State of Pennsylvania, in thus depriving the respondents of this liberty, acted without due process of law, in that the School Board's Regulation was not a proper exercise of the State's police power.

The considered and unanimous judgment of this Court in *Hamilton v. Regents*, 293 U. S. 245, we accept as conclusive, both in reason and authority, upon the point which it decides. In the course—and as an integral part—of our argument, we shall submit the grounds of our contention that that decision does not control the present issue, as the *per curiam* decisions in *Leoles v. Landers*, 302 U. S. 656; *Hering v. State Board of Education*, 303 U. S. 624, and *Johnson v. Town of Deerfield*, 306 U. S. 621—inadvertently, as it seems to us—assumed.

ARGUMENT

POINT I

The right to entertain the belief, to adhere to the principle, and to teach the doctrine, that the act of saluting a flag contravenes the law of Almighty God, is part of the liberty referred to in the Fourteenth Amendment to the Constitution of the United States.

A. This belief and doctrine, so far as the respondents are concerned, are religious in character

In spite of the express finding of fact (*supra*, pp. 5-6) of the District Court that the salute to the flag has a religious significance to the respondents (see 24 F. S. 271, at 274)—a finding by which this Court is bound in its consideration of questions of law raised by petitioners—the petitioners devote five pages of their brief (Pet. B., pp. 27-32) to argument to the effect that the refusal of the Gobitis children to salute the national flag was not founded on a religious belief.

Petitioner's argument in this respect would perpetuate the same error into which the several State Court decisions have been led. *Nicholls v. Mayor*, 7 N. E. (2d) 577, 580 (Mass. 1937); *Leoles v. Landers*, 184 Ga. 580, 587; *People v. Sandstrom*, 279 N. Y. 523, 529. For the argument in petitioners' Point IV is not directed to a decision by this Court of a point of law, but to a determination by it of a theological and religious belief. This Court is urged by the petitioners to hold *inter alia* that a salute to the flag is not "bowing down to a graven image" and that "the precepts and commandments in the Bible approve of the salute."

The Court is referred—in order to decide *this theological question*—(Pet. B., p. 31) to quotations from Scripture, *inter alia*, Matt. 10:12; Matt. 22:21; Romans 13:7; 1 Peter 2:17.

With the greatest deference, we submit that the Supreme Court of the United States does not sit to determine questions of religious or theological belief; nor does any other court, or school board in this land have the right to hold that a flag salute is or is not a religious ceremony or of religious significance, or to determine the religious beliefs for children or adult American citizens.

As the District Court stated in its opinion (21 F. S., 581, 584):

“If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is, if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty.”

In the well-known case of *Davis v. Beason*, 138 U. S. 333, Mr. Justice FIELD thus expressed the unanimous opinion of the Court:

(p. 342) “The term ‘religion’ has reference to one’s views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter.

The first amendment to the Constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others. . . . With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of the people, are not interfered with."

The respondents' beliefs, as found by the District Court in response to their Requests for Findings of Fact Nos. 7-10 (R. 106-108), fall within Justice FIELD's conception of religion. It would be a novel doctrine to assert that the first two commandments of the Decalogue do not affirm something about the believer's relations to his Creator and the obligations which they impose of reverence for His being and character. Nor does it seem possible to argue that the construction which the respondents put upon these commandments is beyond the power of rational belief.

In the brief filed by the American Bar Association's Committee on the Bill of Rights, a number of historical instances are cited (to which we refer) in which honest and serious religious scruples were, in fact, asserted in spite of the majority to comprehend the religious significance of the acts to which these scruples were opposed.

Although the Supreme Judicial Court of Massachusetts in *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2nd) 577 (and other State Courts have agreed), said:

(p. 580) "The flag salute and pledge of allegiance here in question do not in any just sense relate to religion. They are not observances which are religious in nature. They do not concern the views of anyone as to his Creator. They do not touch upon his relations with his Maker. They impose no obligations as to religious worship. They are wholly patriotic in design and purpose."

it added, only ten lines further down in its opinion:

(p. 580) "It is assumed that the statement of beliefs of the petitioner made by him is genuine and true and constitutes the ground of his conduct."

This seems to us to concede the essential point. Of course, the flag salute is not intended as an act of worship, but simply as an expression of loyalty to that great cooperative enterprise in which every American citizen must share. If, however, it be any citizen's belief that it is a religious ceremony and a violation of God's law, and not a proud expression of partnership with a free people, then the attempt to compel his participation in the ceremony can only confirm him in his belief and give to the flag salute the very character which it disclaims.

Furthermore, it seems to us that to say that the act is not a religious rite is an evasion of the issue. One may have conscientious reasons or religious reasons for refusing to commit an act, without such being considered a religious rite. Some people believe that dancing is forbidden by the law of God. Some believe the law of God forbids attendance of their children at the public schools. Some believe it is sinful to eat pork. Such beliefs do not make

dancing, attendance at school, or the eating of pork, religious rites. Nevertheless, to compel such persons to perform such acts would certainly violate conscience and infringe on the free exercise of religious profession and worship.

We cite a few illustrations:

(a) *Attendance on dancing class has not been required over objection of parents.* *Hardwicke v. Board of School Trustees*, 54 Cal. App. 696. In this case the parents had conscientious objections to their children being required to take dancing lessons in school. Instead of telling them they could educate their children elsewhere, the court sustained their objections and upheld the right of the pupils to attend school without participation in the exercises.

(b) *Objections to reading of King James version of the Bible in public schools.* *People v. Stanley*, 81 Colo. 276. In this case a child of Catholic parents was permitted to withdraw from the room while the King James version of the Bible was read. Reading of the King James version of the Scriptures in the presence of this Catholic child constituted an infringement of her rights to religious freedom which the court recognized.

(c) *Bowing of head during prayer.* *Spiller v. Woburn*, 12 Allen (Mass.) 127. The School Committee of Woburn had made an order requiring the reading of the Bible and prayer at the opening of school during which each pupil should stand with head bowed. The court held that any pupil did not need to join in the ceremony and could avoid any act of reverence, even bowing the head, if the parent requested it. The court said:

(p. 129) "Having in view the manifest spirit and intention of these provisions, an order or regulation

by a school committee which would require a pupil to join in a religious rite or ceremony contrary to his or her religious opinions, or those of a parent or guardian, would be clearly unreasonable and invalid."

This language of the court is clearly applicable to the present case.

B. Liberty of religious belief and doctrine is a part of the liberty referred to in the Fourteenth Amendment.

In *Hamilton v. Regents*, 293 U. S. 245, the minor petitioners sought a writ of mandate compelling the Regents of the University of California to permit them to study at the University without taking the course in military training which the regulations of the University prescribed. The petition was grounded on the allegation—which seems not to have been controverted—that the petitioners' religious doctrine forbade them to take part in, or prepare for, war. This Court, speaking unanimously through Mr. Justice BUTLER in an opinion which affirmed the denial of the mandate, stated:

(p. 262) "There need be no attempt to enumerate or comprehensively to define what is included in the 'liberty' protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training."

Although the passage above quoted is a dictum not necessary to the decision, we assume that it is a dictum which will now be followed by this Court. It was unanimous; it was an important concession to the contentions of the then petitioners; and it is in harmony with a long line of this

Court's recent decisions in which the right of free opinion, and the free expression of it, is affirmed.

Stromberg v. California, 283 U. S. 359;

Near v. Minnesota, 283 U. S. 697;

Grosjean v. American Press Company, 297 U. S. 233;

Herndon v. Lowry, 301 U. S. 242;

Lovell v. City of Griffin, 303 U. S. 444;

Hague v. Committee for Industrial Organization, 307 U. S. 496;

Schneider v. State, 308 U. S. 147.

In the presence of these repeated rulings that the rights of free assembly and free expression of one's sentiments are a part of the liberty protected against State interference by the Fourteenth Amendment, we assume as already established beyond question the proposition that that Amendment secures to each individual *the right to refrain from expressions which do violence to his beliefs*.

It may be pertinent here to notice that the religious freedom which is protected against Acts of Congress by the First Amendment to the Constitution includes also "the free exercise thereof". Worship and the free exercise of religious belief do not consist merely in going to a meeting house, church, or synagogue and there engaging in some formal religious ceremony. They include the right and the privilege to exercise freely one's conscientious, religious beliefs in practice, where such exercise does not interfere with "the laws of society, designed to secure its peace and prosperity, and the morals of the people". *Davis v. Beason*, *supra*.

It has been said by Chief Justice HUGHES, with the concurrence of Mr. Justice HOLMES, Mr. Justice BRANDEIS and Mr. Justice STONE, that

"The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in part, one of legislative policy in avoiding unnecessary clashes with the dictates of conscience." *United States v. Macintosh*, 283 U. S. 605, at 634 (1931).

That the present clash between the school authorities and the dictates of the respondents' consciences is not only unnecessary but wholly irrelevant to the achievement of any proper purpose of Pennsylvania's public school system will be argued under the third heading of this brief (*infra*, pp. 19-29).

POINT II

The State of Pennsylvania deprived the respondents of this liberty by requiring them to surrender it as a condition of the minor respondents' attendance at the Minersville public schools.

It is apparent that the Minersville Board of Education is an agency of the State of Pennsylvania.

Ford v. School District, 121 Pa. 543;

It would seem to follow that the action of the Minersville school authorities is to be deemed state action in the present case.

Sterling v. Constantin, 287 U. S. 378;

Lovell v. City of Griffin, 303 U. S. 444;

Missouri, ex rel. Gaines v. Canada, 305 U. S. 337.

A. A State deprives a citizen of his liberty when it requires him to surrender it as a condition of receiving instruction at a public school.

This Court has recently held that a State which withholds access to a State-supported institution of learning from one of its qualified citizens denies to that citizen the equal protection of its laws.

Missouri ex rel. Gaines v. Canada, 305 U. S. 337.

From this proposition it seems to us to follow that to require a citizen, as a condition of his admission, to surrender one of the liberties secured by the Fourteenth Amendment, is to deprive him to some extent at least of that liberty (*Terral v. Burke Construction Co.*, 257 U. S. 529) and thus to present the question whether that deprivation is without due process of law.

B. More especially does exclusion from a public school deprive the citizen of his liberty when it confronts him with the alternative either of purchasing equivalent private schooling or of finding himself committed to the custody of the State.

We draw the Court's attention again to the Pennsylvania school laws which we referred to above (Appendix A and *supra*, pp. 4-5). The minor respondents are required to attend the public schools or obtain equivalent private instruction until they are respectively eighteen years of age. Furthermore if these respondents "cannot be kept in school . . . on account of . . . insubordination or other bad conduct" they may be proceeded against in the juvenile court as "delinquent children"; and, if so proceeded against, the court may commit them to the custody of some other

family, of an incorporated society, of an institution, or to an industrial or training school. (*Purdon's Pennsylvania Statutes*, Title 24, Sec. 1477; Title 11, Secs. 244, 246, 250.) Consequently when the Board of Education of Minersville voted that refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly" (R. 114) it did more than threaten the minor plaintiffs with expulsion from school; it threatened them with prosecution and commitment as "delinquent children" which would, in all probability, have been the actual consequence had not their father purchased them private instruction by paying the practical equivalent of a substantial fine.

It is true that the question whether these statutory provisions could have been enforced against the minor plaintiffs upon the facts which appear in this record is not necessarily before the Court in this case.² Indeed we hope that, if this Court feels compelled to reverse the decision appealed from, it will make it clear that the reversal is without prejudice to this second question of law. But it is pertinent to point out the practical issues which confronted the respondents and the practical consequences which will follow from a reversal of the decree below. If the decisions below are reversed it seems more than probable that this Court will presently be called upon to rule either (1) that children who will not salute may thereby relieve themselves of the obligation of school attendance altogether, or (2) that children may be taken from their parents' homes and imprisoned, in consequence solely of a conscientious refusal to salute the flag of the United States.

² We are informed, however, that this very question, as presented by the analogous statutes of Massachusetts, is now pending before the Supreme Judicial Court of that State.

No such consequence as this was foreshadowed by the decision of this Court in *Hamilton v. Regents*, 293 U. S. 245:

(p. 262) "California has not drafted or called them to attend the university."

Every child in Pennsylvania is by that State's statutes "drafted" to attend some school.

POINT III

The State of Pennsylvania in thus depriving the respondents of their liberty, acted without due process of law in that the School Board's regulation was not a proper exercise of the State's police power.

We are thus brought to what, as we see it, is the true point of the dispute in this case. The respondents believe that God has commanded them to withhold the salute from any flag whatsoever,—and of their obligations to their Creator they must, of necessity, be the final judges on this earth. That the Board of Education of Minersville has deprived them of the liberty of school attendance,—and threatened to deprive them of other liberties,—in consequence of their loyalty to their religion, seems to us perfectly clear. Was it within the Board of Education's authority, as the body charged with the secular education of the children of Minersville, to do what it has done? Was it within the police power of the State acting through its agency, the School Board?

We know of no direct precedent for the solution of such a problem under the Constitution of the United States. The precedents submitted by the American Bar Association's Committee are from Rome, and from England before the

present government of this country was formed. It has long been an article of faith of the American people that their government differed from all the governments which preceded it throughout history in that it was so constructed that it could act only as the supporter, and never as the destroyer, of individual human rights. It has remained for various state legislatures and school authorities to raise,—for the first time, and during the last decade,—the question whether loyalty to the flag of the United States of America was something which must be spontaneous in its very nature, or might, in the discretion of some public official or body, be made a compulsory loyalty akin to the loyalty which was demanded by the eagles of Rome.

In support of what we believe to be the answer demanded by this country's historic tradition, we submit the propositions set forth below:

A. The salute prescribed by the Minersville Board of Education is not—like military service and preparation to render it—a practice which Government may encourage by rewards and punishments, but is a ceremony having no value except as a voluntary expression of sentiment and belief.

In the leading case of *Reynolds v. United States*, 98 U. S. 145, this Court set forth with finality and precision the line which separates the liberty of the spirit from the sphere of action in which the authority of government must prevail. After stating the circumstances which led, in 1785, to the enactment of the original Virginia statute for religious liberty, the Court continues:

(p. 163) "In the preamble of this act (12 Hening's Stat. 84) religious freedom is defined, and after a recital 'that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession

or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty,' it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.' In these two sentences is found the true distinction between what properly belongs to the church and what to the State."

(p. 166) "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice?"

The same doctrine was stated even more succinctly by Pius XII, head of the oldest and greatest religious communion in Christendom in his Encyclical Letter of October 27, 1939:

"No one of good-will and vision will think of refusing the State, in the exceptional conditions of the world today, correspondingly wider and exceptional rights to meet the popular needs. But even in such emergencies the moral law, established by God, demands that the lawfulness of each such measure be scrutinized with the greatest vigor according to the standards of the common good.

"In any case, the more burdensome the material sacrifices demanded of the individual and the family by the State, the more must the rights of conscience be sacred and inviolable. Goods, blood it can demand; but the soul redeemed by God, never." (New York Times, October 28, 1939.)

These extracts, as it seems to us, point out the essential distinction between the case at bar and *Hamilton v. Regents*, 293 U. S. 245. The question in that case was

whether a student, who had completed his legally prescribed schooling, could insist on availing himself of the instruction offered at the University of California without taking the course in military training which was there required. The Court, in holding that he had no constitutional right to insist on attending the university upon these conditions, said:

(p. 262) "Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies."

From this it follows: *first*, as the Court pointed out (pp. 263-4), that government may call upon every citizen to defend its authority in arms; and *second*, that since

(p. 260) "The States are interested in the safety of the United States, the strength of its military forces and its readiness to defend them in war against every attack of public enemies . . . every State has authority to train its able-bodied male citizens of suitable age appropriately to develop fitness, should any such duty be laid upon them, to serve in the United States army or in state militia . . . or as members of local constabulary forces, or as officers needed effectively to police the State."

One way for a State to provide men fit and ready to enter at once upon military duty is to offer rewards to men who will undergo the necessary training; and the opportunity of education at a state university may be offered as a reward. To go further, and to hold that opinions and beliefs about God and the flag of the United States may be made the subject of rewards and punishments—before the fruits of these beliefs have been made manifest in action—

seems to us to be contrary to the sound doctrine of *Reynolds v. United States*.

We do not understand it to be contended that the flag salute ceremony has any practical consequences to popular welfare or to the strength and resources of the government apart from the sentiments of loyalty which it is expected to arouse in the pupil's mind. The substance of the defendants' case seems to be stated at the beginning of the reported testimony of Charles Edward Roudabush, the Minersville School Superintendent (R. 91):

"We feel that every citizen and every child in the public schools should have the proper regard for the emblem of the country, the flag. We have never required the salute of the flag, yet everyone in our school system for twenty-three years, and even longer, has given the salute voluntarily, willingly. The salute of the flag, we believe, is a means of helping to inculcate in the children a love for country, the institutions of the country, and for that reason we have expected the salute from the teachers and the children."

This answer is confirmed and elaborated through Dr. Roudabush's remaining testimony (R. 91-101).

We have been unable to find anything in this testimony to suggest that even Dr. Roudabush holds the opinion that the salute performs a useful purpose if it is given in fear of Divine punishment, or as an outward formality accompanied by resentment and anxiety within the heart.

B. To expel the minor respondents from the public schools of Minersville has no tendency to instruct the youth of Pennsylvania in loyalty to the flag and Constitution of the United States.

Of course, there can be no question, since *Halter v. Nebraska*, 205 U. S. 34, and *Gilbert v. Minnesota*, 254 U. S.

325, of Pennsylvania's authority to provide for instruction in "civics, including loyalty to the State and National Government" (*Purdon's Pennsylvania Statutes*, Title 24, Sections 1551, 1557) in its public schools. Neither would we contend that the Minersville Board of Education went beyond its province in providing the flag salute exercise described in the record (R. 114-115) as a means of imparting instruction in this field, provided the salute is voluntary.

But we do submit that the purpose of this exercise is frustrated, and not furthered, when two children are expelled because their hearts have not learned how to take part in it; and their school-mates are thereby served with notice that their own salutes will thereafter be rendered, not because they wish thus to honor their country's flag, but because they must. Upon this aspect of the case we cannot do better than invite the Court's attention to the opinion of LEHMAN, J.—dissenting from the majority's opinion, but concurring in their result—in the case of *People v. Sandstrom*, 279 N. Y. 523, at pages 533-539. This opinion closes as follows:

(p. 539) "The salute to the flag is a gesture of love and respect—fine when there is real love and respect back of the gesture. The flag is dishonored by a salute by a child in reluctant and terrified obedience to a command of secular authority which clashes with the dictates of conscience. The flag 'cherished by all our hearts' should not be soiled by the tears of a little child. The Constitution does not permit, and the Legislature never intended, that the flag should be so soiled and dishonored."

To contend that exclusion from the public schools tends to promote patriotism on the part of the present plaintiffs is simply to say that the findings of the District Court,—

before whom all the respondents testified orally (R. 47-83)
—are wrong.

We quote from the District Court's opinion rendered after the hearing:

(R. 124) "No one who heard the testimony of the plaintiffs and observed their demeanor upon the witness stand could have failed to be impressed with the earnestness and sincerity of their convictions."

"The refusal of Lillian and William to salute the flag in the Minersville Public School was based solely upon their sincerely held religious convictions that the act was forbidden by the express command of God as set forth in the Bible. Both they and their father, Walter Gobitis, are loyal American citizens who honor and respect their state and country and who are willing and ready to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. Their refusal to salute the flag was not intended by them to be disrespectful to the Government and it did not promote disrespect for the Government and its laws nor endanger the public safety, health or morals or the property or personal rights of their fellow citizens."

"The enforcement of defendants' regulation requiring the flag salute by children who are sincerely opposed to it upon conscientious religious grounds is not a reasonable method of teaching civics, including loyalty to the State and Federal Government, but tends to have the contrary effect upon such children."

To say that the respondents' exclusion from the public schools is necessary to preserve the patriotism of their school-fellows, and to prevent the schools from being demoralized, as Dr. Roudabush testified (R. 92), seems to us to lead to conclusions that are wholly untenable. The respondents, since their exclusion, have sought and obtained

private instruction, but—had they not done so—their school-fellows would have taken notice that children who did not participate in the flag salute could escape, not only from that ceremony, but from the whole burden of attending school. This, surely, would be far more demoralizing than merely to exclude the respondents from the school-room during the flag salute ceremony, and would threaten the foundations of compulsory school attendance throughout the State.

As the only alternative, the Board of Education would then be compelled to proceed against the respondents as "delinquent children" (*Purdon's Pennsylvania Statutes*, Title 24, Section 1477) and would end by finding itself in the position of demanding that the minor respondents be taken from their parents and placed in the custody of the State. (*Purdon's Pennsylvania Statutes*, Title 11, Section 250.)

This logical consequence of the position taken by the petitioners but illustrates the dilemma in which authority inevitably involves itself when it attempts to command, rather than to inspire, respect. If the commanded forms of respect be not forthcoming, authority must then either acknowledge its impotence—with all the consequent encouragement to anarchy—or else enter upon the enterprise of persecuting its subjects for their beliefs.

C. To follow up the respondents' expulsion by proceeding against them as delinquent children, could not result in loyalty to the Constitution which the flag symbolizes, but only in submission to government of a different kind.

It is impossible, as we think we have shown under our last point, for Pennsylvania to enforce both the flag salute and the compulsory school law (*Purdon's Pennsylvania*

Statutes, Title 24, Section 1421) against all children, unless she is prepared—if need be—to proceed against them as delinquents (*Purdon's Pennsylvania Statutes*, Title 24, Section 1477) and commit them to the custody of strangers for bringing up (*Purdon's Pennsylvania Statutes*, Title 11, Section 250). This Court, we submit, could not sustain the legality of that proceeding without substantially overruling three of its well-considered judgments.

Meyer v. Nebraska, 262 U. S. 390;

Pierce v. Society of Sisters, 268 U. S. 510;

Farrington v. Tokushige, 273 U. S. 284.

In each of the foregoing decisions, this Court affirmed the constitutional right of parents to direct the education and upbringing of their children, and to impart to them their own cultural inheritance and their own faith. In each of them the doctrine that the child is the mere creature of the state was definitely repudiated by this Court. If other children, situated as are these respondents, shall ever be torn from their parents and committed to the custody of a state institution in consequence of their faithfulness to their parents' religious teaching, these decisions would be overruled as to them. And this certainly would not inspire youth with loyalty to the government which protects their liberties, but only with fear of the government which held the power to deprive them of their religion, of their parents, and of their homes.

D. It is not competent for Pennsylvania to involve the flag of the United States in a controversy with its citizens over the forms of respect which loyalty to the flag and Government of the United States demand.

Notwithstanding the decision in *Halter v. Nebraska*, 205 U. S. 34, we venture to raise the question whether Penn-

sylvania has authority—without the express consent of Congress—to involve the flag of the United States in the unhappy quarrel—the “unnecessary clash”—with its citizens which this brief debates. We cannot find that Congress has ever thought it wise or necessary to prescribe the forms of respect which citizens not on military service shall render to the emblem of the Federal Government. The Nebraska statute which was held valid in *Halter v. Nebraska*, *supra*, did little more than give the national flag the same protection which is afforded to private trade-marks in that State.

Compiled Statutes of Nebraska (1929), Sections 28-605; 28-1101.

Treason against the United States is defined by Article III, Section 3, of its Constitution; and it has been said that even Congress may not enlarge the definition.

United States v. Greathouse, 26 Fed. Cas. 1524.

Yet the petitioners, who are required by Pennsylvania law to offer the respondents “regular courses of instruction in the Constitution of the United States” (*Purdon’s Pennsylvania Statutes*, Title 24, Section 1557) have pursued a course which might well give unlearned children the impression that the respondents’ conduct amounts to a treasonable act.

We again draw the Court’s attention to the District Court’s finding, upon hearing the testimony of these plaintiffs (R. 123) that these plaintiffs “honor and respect their state and country”, and that their refusal to salute “was not intended by them to be disrespectful to the Government and it did not promote disrespect for the Government and its laws”. Is this finding of a Federal Court, with

respect to the loyalty of citizens of the United States to the Federal Government, to be subordinated to the ruling of a local school board?

. In the field of interstate commerce, it is well settled that there are areas in which States may legislate until they are occupied by Act of Congress, and other areas where they may not legislate at all. May there not be a similar division of the field of possible legislation with reference to the national emblem of the United States?

Conclusion.

It was never more important to reaffirm and give meaning to the principle of religious liberty than today. The principle that matters of religion are to be decided by the individual and not by Government, be it Court, Legislature or Executive, should be unmistakably reaffirmed by this Court in this case. The principle that religious belief and practice are within the guarantees of the First and Fourteenth Amendments, protected from State interference, should be firmly established. And it should be made clear that the only purposes for which a State may exercise its police powers are in the domain of action, and not the heart.

In this case, no practical consideration justifies soiling our national emblem "with the tears of a little child"³ who, in the view of most of us, may be misguided or even misinstructed, but whose religious convictions, in the absence of overwhelming public necessity, must be respected and not penalized.

³ LEHMAN, J., in *People v. Sandstrom*, *supra*.

**The decree of the Circuit Court below should
be affirmed.**

Respectfully submitted,

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of the Massachusetts Bar.

ARTHUR GARFIELD HAYS,
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FOR AMERICAN CIVIL LIBERTIES UNION

APPENDIX A

Extracts from Pennsylvania School Laws

(as found in Purdon's Pennsylvania Statutes, 1936,
Compact Edition)

TITLE 24: EDUCATION

SEC. 331. *Elementary schools required to be established, maintained, etc.; other schools may be established, maintained, etc.; kindergartens; cafeterias.* The board of school directors in every school district in this Commonwealth shall establish, equip, furnish, and maintain a sufficient number of elementary public schools, in compliance with the provisions of this act, to educate every person, residing in such district between the ages of six and twenty-one years, who may attend; and may establish, equip, furnish, and maintain the following additional schools or departments for the education and recreation of persons residing in said district * * * namely:

High schools.

Manual training schools.

Vocational schools.

Domestic science schools.

[and thirteen other specified schools and departments]

SEC. 1371. *Who may attend schools.* Every child, being a resident of any school district in this Commonwealth, between the ages of six and twenty-one years, may attend the public schools in his district, subject to the provisions of this act.

SEC. 1421. (as amended July 1, 1937 by 1937 Laws of the General Assembly of Pennsylvania, No. 478, Section 4) *Compulsory attendance; exceptions; migratory children.* The term "compulsory school age," as hereafter used, shall mean the period of a child's life from the time the child's parents elect to have said child enter school, which shall

not be later than at the age of eight years until the age of eighteen years. * * *

Every child of compulsory school age having a legal residence in this Commonwealth, as herein provided * * * is required to attend a day school in which the subjects and activities prescribed by the State Council of Education are taught in the English language; * * * and such child or children shall attend such school continuously through the entire term during which the public elementary schools in their respective districts shall be in session.

Provided, that the certificate of any principal or teacher of a private school, or of any institution for the education of children, in which the common English branches are taught in the English language, setting forth that the work of said school is in compliance with the provisions of this act, shall be sufficient and satisfactory evidence thereof. * * *

SEC. 1477. *Incorrigible, etc. children; proceedings against.* In case any child between eight and sixteen years of age cannot be kept in school in compliance with the provisions of this act, on account of incorrigibility, truancy, insubordination, or other bad conduct, or if the presence of any such child attending school is detrimental to the welfare of such school, on account of incorrigibility, truancy, insubordination, or other bad conduct, then, in any such case, the board of school directors of the proper district may * * * proceed against said child before the juvenile court, or otherwise, as is now or may hereafter be provided by law for incorrigible, truant, insubordinate, or delinquent children.

SEC. 1551. *Enumeration of.* In every elementary public and private school, established and maintained in this Commonwealth, the following subjects shall be taught * * * civics, including loyalty to the State and National Government. * * *

SEC. 1557. *Instruction in Constitution of United States.* In all public and private schools located within the Com-

monwealth * * * there shall be given regular courses of instruction in the Constitution of the United States.

SEC. 1558. *When instruction in Constitution to begin and terminate and extent of such instruction.* Such instruction in the Constitution of the United States shall begin not later than the opening of the eighth grade, and shall continue in the high school course. * * *

SEC. 1581. *High school and complete high school course defined; classification; junior high schools.* A complete high school course is one requiring four years beyond an elementary course of eight years or six years beyond an elementary course of six years. The Department of Public Instruction shall make such regulation as shall be necessary to insure proper standards for the various grades of the twelve years of the public school program of studies. * * *

SEC. 1582. *Pupils: admission.* In all school districts there shall be admitted to the public high schools therein all children under the age of twenty-one years, residing within the school districts, who shall be found qualified for admission thereto after having undergone such an examination as shall be prescribed by the board of school directors. * * *

TITLE 11: CHILDREN.

SEC. 244. *Jurisdiction of juvenile court; presiding judge.* Except as hereinafter provided, the several courts, as defined in this act, shall have and possess full and exclusive jurisdiction in (a) all proceedings affecting delinquent, neglected, and dependent children; * * * Such court, when exercising the jurisdiction conferred by this act, shall be known as the "juvenile court."

SEC. 246. *Initiation of Proceedings.* The powers of the court may be exercised—

1. Upon the petition of any citizen, resident of the county, setting forth that (a) a child, giving his or her

name, age, and residence, is neglected, dependent, a delinquent, and is in need of care, guidance, and control.

SEC. 250. *Hearing; court orders.* At the hearing, or any continuation thereof, the judge or judges shall, after an inquiry of the facts, determine whether the best interests and welfare of a child and the State require the care, guidance and control of such child, and shall make an order accordingly.

The court may—

(a) Allow a child to remain in its home under the care of his or her parent or parents, or place such child in a suitable family home, subject, in either case, to the supervision and guardianship of a probation officer, and may require such child to report to the probation officer as often as deemed necessary, and may require such child to be returned to the court for further proceedings whenever the same appears to the court to be necessary.

(b) Commit a child to the care, guidance and control of some reputable citizen of good moral character, subject to the supervision of a probation officer and to report as required in clause (a) of this section.

(c) Commit a child to some suitable institution or to the care of an incorporated association or society, one of whose objects is the care, guidance and control of delinquent, dependent and neglected children, and which is willing to receive said child.

(d) Commit a child to an industrial or training school, or county institution or school maintained for such purpose; willing to receive it, for care, guidance and control.

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CHARLES ELMORE COBBLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1939

No. 690

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION
OF MINERSVILLE SCHOOL DISTRICT, CONSISTING OF
DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE,
DR. T. J. MCGURL, THOMAS B. EVANS AND WILLIAM
ZAPF, AND CHARLES E. ROUDABUSH, SUPERINTENDENT OF
MINERSVILLE PUBLIC SCHOOLS,

Defendants-Petitioners,

v/s.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN GOBITIS,
/ AND WILLIAM GOBITIS, MINORS, BY WALTER GOBITIS,
THEIR NEXT FRIEND,

Plaintiffs-Respondents.

ON CERTIORARI FROM THE THIRD CIRCUIT COURT OF APPEALS

**BRIEF OF THE COMMITTEE ON THE BILL OF RIGHTS,
OF THE AMERICAN BAR ASSOCIATION,
AS FRIENDS OF THE COURT.**

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Supreme Court of the United States

No. 690

October Term, 1939

MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF
MINERSVILLE SCHOOL DISTRICT, Consisting of DAVID I.
JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J.
McGURL, THOMAS B. EVANS and WILLIAM ZAPP, and
CHARLES E. ROUDABUSH, Superintendent of Minersville
Public Schools,

Defendants-Petitioners,

vs.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS, and
WILLIAM GOBITIS, Minors, by WALTER GOBITIS, Their Next
Friend,

Plaintiffs-Respondents.

BRIEF OF THE COMMITTEE ON THE BILL OF RIGHTS, OF THE AMERICAN BAR ASSOCIATION, AS FRIENDS OF THE COURT.

Preliminary Statement.

This brief is filed by the Committee on the Bill of Rights, of the American Bar Association, as friends of the Court.¹ The Committee was created in 1938 under authority of a resolution of the House of Delegates of the Association. Its present purposes and powers are defined

¹ The membership of the Committee is as follows: Douglas Arant (Alabama); Zechariah Chafee, Jr. (Massachusetts); Grenville Clark, Chairman (New York); Osmer C. Fitts (Vermont); Lloyd K. Garrison (Wisconsin); George I. Haight (Illinois); Monte M. Lemann (Louisiana); Ross L. Malone, Jr. (New Mexico); Burton W. Musser (Utah); John Francis Neylan (California); Joseph A. Padway (Washington, D. C.); and Charles P. Taft (Ohio). Mr. Neylan was unable to participate in the consideration of this brief.

in a resolution of the House of Delegates dated January 9, 1940, which empowers the Committee

"When authorized by the House of Delegates or Board of Governors, or, in case of emergency, by the President, to appear as *amicus curiae* or otherwise in cases in which vital issues of civil liberty are deemed to be involved."

The text of the resolution is set forth in an appendix to this brief.

This case involves the constitutionality of the compulsory flag salute for children in the public schools. The opinion of the Circuit Court (holding void the regulation of the Minersville School District) states that compulsory flag salute statutes exist in 18 States and that 120 children have refused for religious reasons to comply with the compulsory salute. The issue of constitutionality has, therefore, a wide application. However, the importance of the issues presented is not to be judged by their immediate practical importance, but rather by the effect upon the integrity of American liberties; and the case would be no less vital if it related only to the statute of a single state and to the rights of a single child. The Committee believes that the issues involved are fundamental and worthy of discussion from an impartial standpoint, with special reference to the interest of the public at large. Accordingly, the Committee has sought and obtained authority to present this brief. The consent of counsel for the parties has also been given.

The Committee has no interest in this litigation save as its outcome (a) will affect the integrity of the basic right to freedom of conscience, and (b) will bear upon the extent of governmental power affirmatively to *force* our people to express themselves in a particular manner. In this latter aspect the case presents a constitutional question apparently new to this Court, in that the question relates to the validity of an affirmative command that the individual *shall* perform a certain ritual. This is a new type

of legislation, raising questions different from the validity of a mere restraint or prohibition against a particular form of expression, e.g., seditious or obscene utterances.

The Committee believes that the preservation of such rights as are here involved depends in large part upon the understanding of the community as to the issues at stake and their practical implications. This understanding in turn largely depends upon the opinions of the courts in test cases; and it is thought that the judicial opinions delivered by most of the lower courts in cases involving the problems here presented have failed to promote such understanding. In a number of instances, they seem to have obscured rather than clarified what the Committee deems to be the pivotal question of law: Is there any public interest in a *compulsory* flag salute sufficiently sound and substantial to justify the State in overriding and penalizing a sincerely held religious scruple and abridging personal liberty?

Although not minimizing the importance of the case to the particular parties litigant, the Committee has been especially moved by the hope that this Court in its opinion will take the occasion to elucidate the principles which safeguard religious freedom and to define the limits of state power to *coerce* individual expression under our system of free institutions.

The Committee's Position.

The Committee believes that the compulsory flag salute regulation adopted by the petitioner Board of Education violates the constitutional prohibition against the deprivation of liberty without due process of law, because without sufficient justification it requires the suppression of a sincerely held religious scruple; and also because, apart from any religious aspect, it transcends the limits of governmental power in attempting to compel a particular form of expression without sufficient reason for such compulsion.

Findings of Fact.

The findings of the District Court (which have not been disturbed by the Circuit Court and therefore, in the absence of plain error, are conclusive here) establish that the two infant plaintiffs refused to salute the American flag as a part of the daily exercises in a public school in Minersville, Pennsylvania (R. 122). The findings further recite:

(a) that because of their refusal to salute, they were expelled by the petitioner Superintendent from the Minersville Public Schools (R. 122)²;

(b) that the children are members of a religious sect generally known as Jehovah's Witnesses, who sincerely believe that the act of saluting the flag is a violation of the divine commandment stated in verses 3, 4, and 5 of the twentieth chapter of the Biblical book of Exodus (being the Second Commandment) which forbids the bowing down to a graven image (R. 122);

(c) that they believe such a salute to signify that the flag is an exalted emblem or image of the civil government and as such receives the obeisance and reverence of the person who salutes it (R. 122);

(d) that they believe that the salute contravenes the law of God for the further reason that it means in effect that the saluting person ascribes salvation and protection to the thing or power which the flag stands for and that, since the flag and the Government which it symbolizes are worldly institutions, the flag salute denies the supremacy of God (R. 122);

(e) that the children's refusal to salute the flag was based solely upon their sincerely held religious convictions, described above (R. 123);

² In so expelling the children, the Superintendent was acting pursuant to a regulation adopted by the petitioner Board of Education under color of authority conferred by a Pennsylvania statute which empowered the Board to provide for instruction "in civics, including loyalty to the State and National Government" (R. 123; cf. R. 156).

(f) that both they and their father, the respondent Walter Gobitis, are loyal American citizens who honor and respect their state and country and who are willing and ready to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God (R.123);

(g) that their refusal to salute the flag was not intended by them to be disrespectful to the Government and did not promote disrespect for the Government and its laws (R. 123); and, finally.

(h) that as a result of the expulsion of the children from the public schools, their father has been compelled to bear the expense of sending them to a private school in order to escape the criminal penalties provided by Section 1423 of the Pennsylvania School Code for failure to comply with the state compulsory school attendance statute (Section 1414) (R. 123-124). This finding of fact necessarily implies that there is no available public school which the children can attend without being subjected to the flag salute requirement.

The Committee predicates its discussion, insofar as facts are assumed, upon the above findings of fact.

Considerations To Be Advanced.

The Committee will submit the following:

First: Neither the legislative branch nor the courts have any power to declare that a given practice does not and cannot carry a religious significance, in the face of an individual's sincere and honest determination that *for him* a religious significance exists. Consequently the finding of fact that the respondent children sincerely regarded the salute as a religious ritual forbidden by the ~~Second~~ Commandment is a conclusive answer to the contention that the salute *must* be considered merely a patriotic ceremony which *cannot* have any religious significance. To hold otherwise and thus to deny the right of private judgment as to what carries a religious meaning would, we shall submit, strike at the heart of religious freedom.

Second: Granting that the State, under some circumstances, can constitutionally override religious scruples, such action cannot constitutionally be taken unless there is a clear showing that the overriding of the individual's religious belief is essential in the public interest. No such showing, we shall submit, has been made here; and consequently the school regulation cannot be upheld as a reasonable measure in the public interest.

In our view, the two points just stated should, for clarity, be carefully separated and dealt with as distinct issues.³ The former involves the question whether the right of private judgment as to the religious content of a particular practice shall be held inviolate. The second point relates to a wholly different matter, *viz.*: Assuming the existence of the religious scruple, under what circumstances may the State constitutionally override it? The second question is of a character that the courts have been accustomed to deal with in a variety of situations. But the first issue, as to whether it is within the power of legislature or court to pass upon the fact of the existence of a particular religious scruple or its validity, involves the question whether our courts are to enter upon an unfamiliar type of determination in theological matters.

Third: We shall submit that even if no question of religious liberty is deemed to be here involved, there is another and broader ground upon which legislation of this character should be held void, *viz.*, that to compel the salute over objection is an unconstitutional infringement upon individual liberty, even though the refusal to comply is not deemed to involve a religious question. The state courts have said several times, in broad terms, that the legislature may properly enact laws to promote loyalty and morale and that the compulsory salute may be justified as an exercise of legislative discretion as to the means to be

³ See Note, *Compulsory Flag Salutes and Religious Freedom*, 51 Harvard Law Review 1418, 1420 (1938).

employed to that end. The breadth of the language used in expressing this thought gives one pause and raises questions of a serious character.

When it is said that the legislature has a broad discretion to prescribe ceremonies in order to promote loyalty, it is fair to ask how far this doctrine extends. For instance, suppose that under such a doctrine a law were enacted requiring all *adult* persons to salute the flag at fixed intervals. Would such a law be constitutional under our system of government even in the absence of an assertion of religious scruples as the ground of opposition? We shall submit that it would not be constitutional; and if this position be sound, the question arises whether there is a constitutional difference between the imposition of the compulsory flag salute upon children and the imposition of a like requirement upon adults.

We respectfully suggest that this Court should consider the implications which are inherent in the broad language used by some of the state courts as to the extent of legislative discretion to require ceremonies of this sort. And we shall submit that this Court should hold, if necessary, that the compulsory flag salute is unconstitutional even if the refusal to conform thereto is not treated as involving an issue of religious liberty.

Fourth: Apart from the main issues above mentioned, there is also a subsidiary question of a more technical nature, as to whether the right to attend state supported schools is a mere privilege the enjoyment of which can be conditioned in any way that the State sees fit. Under a fourth heading, we shall submit that any such contention as a ground for the dismissal of this suit for reinstatement is without basis.

ARGUMENT

I

**So far as the respondent children are concerned,
the salute must be regarded as a religious ritual.**

Most of the courts which have upheld the compulsory flag salute laws have taken the position that these laws present no issue of religious freedom at all, because a salute to the flag *cannot* ever have a religious significance. They have asserted, as the petitioner school authorities also assert here, that *the salute is not a religious ceremony* even as to children who honestly believe it will bring divine retribution. *Nicholls v. Lynn*, 7 N.E. (2d) 577, 580 (Mass., 1937); *Laoges v. Landers*, 184 Ga. 580, 587, 192 S.E. 218, 222 (1937); *Hering v. State Board of Education*, 117 N.J.L. 453, 189 Atl. 629 (1937); *People v. Sandstrom*, 279 N.Y. 523, 529-530, 18 N.E. (2d) 840, 842 (1939).⁴ As

⁴ For example:

"Saluting the flag in no sense is an act of worship or a species of idolatry, nor does it constitute any approach to a religious observance." 279 N. Y. at p. 529, 18 N.E. (2d) at p. 842.

"The act of saluting the flag of the United States is by no stretch of reasonable imagination 'a religious rite'." 184 Ga. at p. 587, 192 S.E. at p. 222.

"There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any 'religious observance.'" 7 N.E. (2d) at p. 580.

The petitioners here take the same position when they say (Brief for Petitioners, p. 28): "The act of saluting the national flag at daily school exercises can not be made a religious rite by the respondents' mistaken interpretation of the Bible. The ceremony is in no way referable to the religious beliefs of any of the participants and it therefore follows that a pupil's refusal to salute the flag cannot be based on a religious belief."

To the contrary, see Lehman, J., in *People v. Sandstrom*, *supra*:

"Episcopalians and Methodists and Presbyterians and Baptists, Catholics and Jews, may all agree that a salute to the flag cannot be disobedience to the will of the Creator; all the judges of the State may agree that no well-intentioned person could reasonably object to such a salute; but this little child has been taught to believe otherwise. * * * I cannot assent to the dictum of the prevailing opinion that she must obey the command of the principal, though trembling lest she incur the righteous wrath of her

has been said, the doctrine represented by these cases strikes at the heart of American religious freedom. We suggest that no American court should presume to tell any person that he is wrong in his opinion as to how he may best serve the God in which he believes.

This conclusion results naturally from the traditional American attitude toward small religious groups, an attitude which forms an integral part of our way of life. Beginning with the mystic and evangelical religious groups of the Eighteenth Century, such as the Shakers and Illuminists and other primitive Old Testament communities, a host of religious associations have arisen to become a part of our national life.⁵ It has been consistent American policy to accord these small groups all rights and privileges granted to the larger and more ancient religious bodies.

It is of course true, even under our Bill of Rights, that particular religious views from time to time have had to yield to the paramount demands of the public health, safety or morals. We fully recognize the general proposition that, in proper circumstances and by reasonable means, the State has power to protect the public welfare from any activity which threatens it, even from actions sought to be justified on grounds of religious belief. The first question to determine, however, is whether a matter

Maker and be slain 'when the battle of Armageddon comes.'" 279 N. Y. at pp. 536-537, 18 N.E. (2d) at pp. 845-846.

See also the opinion of the District Court in the present case, on demurrer:

"Liberty of conscience means liberty for each individual to decide for himself what is to him religious. * * * To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty. To such a pernicious and alien doctrine this court cannot subscribe" (R, 18).

⁵ * * * In the United States at the present time there are 212 denominations recognized by the United States Census as distinct entities, exclusive of a large number of Buddhist, Mohammedan, and other Oriental organizations, local communistic societies, and other bodies that call themselves religious. Nowhere else in the world, save perhaps in India, does one find such a wilderness of sects and religious variations." Clark, *The Small Sects in America* (Cokesbury Press, Nashville, 1937), p. 13.

See also Mecklin, *The Story of American Dissent* (Harcourt, Brace & Co., New York, 1934) c. XIV.

of religious belief is actually involved. The method of resolving this issue is basic to every case of alleged interference with freedom of conscience.

Courts are competent to judge when the public welfare is in fact jeopardized, for that is a matter susceptible of rational analysis and logical disputation among men. But in matters of faith the case is different; here analysis and logic must yield to the simple individual belief. It should, we submit, be deemed inadmissible for a court to brush aside a sincere religious objection because the same scruple is not held by most of the people, or because in the court's own view the scruple is theologically unsound. Such an official determination would presuppose a unity between church and state which is foreign to our most basic institutions.

It may be admitted that an asserted religious belief may possibly be so fantastic as to justify an inference that the person asserting it is either insane or dishonest. See, e.g., *Barr v. Sumner*, 183 Ind. 402, 107 N.E. 675, 109 N.E. 193 (1915); *Nalty's Adm'r v. Franzman's Ex'r*, 221 Ky. 709, 299 S.W. 585 (1927); and cases collected in 28 R.C.L. 106. But it seems plain that the facts of this case cannot come within any such principle. There is no suggestion that the respondent children are insane; and it has been expressly found that their assertion of religious scruple was honest and sincere.

The philosophy upon which the four state courts mentioned above have swept aside the assertion of religious scruple as if it did not exist, is somewhat obscure. These courts have affirmed that the salute can have no religious significance, but, in our judgment, have not given an adequate explanation of the reasons for this declaration. However, so far as can be determined from their opinions, the thought appears to be that the asserted scruple, though honestly held, is of so unusual a character and so contrary to generally accepted views that it must be dismissed as having no real existence.

It is as if the following exchange had occurred between the state courts and the objecting children:

The Court: You say that you have a religious objection to giving this salute. We cannot understand that. The salute is only a patriotic gesture and cannot have any religious meaning.

The Children: We have been brought up to believe that it is against our religion to give this salute. It is against the 20th chapter of Exodus, which contains the Second Commandment.

The Court: It makes no difference what you have been brought up to believe. We don't question your sincerity; but you are wrong in thinking that there is anything religious about this salute.

The Children: Still we have to refuse. That is the way we have been brought up and that is the way we believe.

The Court: It is too bad but we must tell you again that you are wrong in thinking the salute has any religious meaning.⁶

The issue as to whether the individual should be the sole judge of his own religious belief is a very old one. For centuries, various sects have honestly ascribed religious significance to acts and ceremonies that, to the vast majority, held no religious meaning whatever. As bearing upon the question as to whether *bona fide* religious scruples can actually exist notwithstanding their lack of harmony with the opinion of the age, it may be useful to recall a few examples of historical situations analogous to that here presented. Accordingly, we cite several instances in which honest and serious religious scruples were, in fact, asserted in spite of the inability of the ma-

⁶ Compare the colloquy set out in the opinion of the Court in *People v. Sndstrom*, 279 N.Y. 523, 528-529, 18 N.E. (2d) 840, 842 (1939).

jority to comprehend the religious significance of the acts to which these scruples were opposed.⁷

During the period from 26 to 36 A.D., when Pilate was the Roman procurator of Judea, he caused to be brought into Jerusalem standards bearing busts of the Emperor Tiberius, apparently in order to inculcate respect for the Roman State. The Jews considered the display of these images to be a violation of the same Biblical Commandment involved in the present case. In pursuance of this religious belief, they so annoyed Pilate with repeated petitions for removal of the statues from their city that, as Josephus relates:

“ . . . when the Jews petitioned him again, he gave a signal to the soldiers to surround them, and threatened that their punishment should be no less than speedy death, unless they left off disturbing him, and went their ways home. But they threw themselves upon the ground, and bared their necks, and said they would welcome death, rather than that the wisdom of their laws should be transgressed. Thereupon Pilate was astonished at their determination to keep their laws inviolable, and instantly commanded the images to be carried back from Jerusalem to Caesarea.”
Josephus, *Antiquities of the Jews*, xviii. 3. 1.

Here, it will be observed, is a case in which the objection upon religious grounds must have seemed unreasonable or even fantastic to the civil authority. But that religious belief was no less sincere and no less a fact.

Another instance in which the scruple of the religious objector must have seemed unreasonable, is recorded in the essay *De Corona* by Tertullian of North Africa, written about 200 A.D.⁸ It was customary for the Roman Emperors of that time to make presents to their soldiers,

⁷ For the materials from which are taken the examples to be mentioned, we are indebted to Prof. Henry J. Cadbury (Hollis Professor of Divinity), Prof. Arthur D. Nock (Frothingham Professor of the History of Religion), and Dean Willard L. Sperry (Plummer Professor of Christian Morals), all of the Harvard Divinity School.

⁸ The essay appears in English translation in Volume III of the series called “The Ante-Nicene Fathers” (Charles Scribner’s Sons, New York, 1918), at page 93.

called the *donativum*. Since this was given personally by the Emperor, the soldiers were expected to appear in festal garments, wearing laurel wreaths upon their heads. For some reason, certain Christians thought the wearing of a wreath to be incompatible with Christianity. Apparently they felt either that God had not intended the flowers which He had created to be so used, or that this wreath was somehow connected with the wreaths used in pagan sacrifices. The pagans and even many Christians regarded the wreath as having no religious meaning. On one such occasion, a soldier appeared before the Emperor carrying his wreath in his hand. He was at once noticed, was questioned, confessed himself a Christian, and was summarily punished. Tertullian endorses the soldier's refusal to wear the wreath and praises his courage and consistency.

In this instance again, the sincerely held religious scruple must have seemed to nearly all Romans of that day at least as peculiar as does the scruple of Jehovah's Witnesses to most Americans in 1940.

In more modern times, perhaps the most apposite example is the assertion by the Quakers in England during the seventeenth century, of a religious scruple against uncovering the head in deference to any civil authority. The Quakers sincerely believed that the uncovering of the head was an act of worship, and were unable to bring themselves to take off their hats even under circumstances where the general custom of the kingdom demanded the gesture. This scruple, however fantastic it may have appeared to the vast majority, was, nevertheless, an accepted and important tenet of the Quaker sect. The doctrine is thus stated in a standard contemporary exposition of original Quakerism:

"He that kneeleth, or prostrates himself to man, what doth he more to God? He that boweth, and uncovereth his head to the *creature*, what hath he reserved to the *Creator*? Now the apostle shows us, that the uncovering of the head is that which God requires of

us in our worshipping of him, 1 Cor. xi. 14." Barclay, *Apology for the True Christian Divinity*, Proposition xv. Sect. 6 (1676).

For observing this scruple by refusing to doff their hats in court, many Quakers were punished, although some authorities, such as Charles II, respected their belief and declined to penalize them.⁹

There are two common aspects of these examples which, we believe, bear on the present issue. *Firstly*, in each instance it is clear that the religious belief or scruple in question must have been considered unusual and cantankerous and must, therefore, have been unpopular. *Secondly*, in each instance the religious significance of the practice objected to could not have been apparent to the majority, who must have been quite unable to see that the exhibition of the images or the carrying of the laurel wreath or the doffing of the hat could reasonably be considered as having a religious content.

These and many other instances that could be cited demonstrate, we believe, that the judicial unwillingness of some of the lower courts to concede the religious nature of the salute arises largely from the novelty and strangeness of the particular objection here made to it, and from the fact that Jehovah's Witnesses are a comparatively new and small group. Supposing that this same religious objection had been raised by an old and respected sect such as the Quakers, is it not possible or probable that the courts would have recognized the actuality of the religious significance attributed to the salute? Or if one of our largest denominations should have adopted the construction of the Second Commandment which is taught by Jehovah's Witnesses, so that hundreds of thousands of

⁹For punishments inflicted upon those who refused "hat honor" see Joseph Besse, *A Collection of the Sufferings of the People called Quakers* (1753) *passim*. For instances of tolerance see *Calendar of State Papers, Domestic*, 1657-8, p. 156 (Cromwell); Richard Hawkins, *Brief Account of the Life of Gilbert Laty* (London, 1707) (Charles II); *Journal of Friends Historical Society* viii, 16 (Duke of Monmouth); *ibid.* x, 59 (Louis XVI).

American citizens sincerely ascribed religious significance to the flag salute, is it not most probable that the state courts would have had no difficulty in recognizing such significance?

The record of history shows that the existence and seriousness of religious beliefs are not to be measured by the current opinion of the time. History shows that the existence of religious scruples lies in truth and fact within the breast of the individual and nowhere else; and no current opinion or fiat of legislatures or courts have ever been able to establish that a particular act or ceremony has no religious significance when the individual himself asserts the contrary.

The truth is that the attempt to adjudge whether or not a particular ceremony can have or does in fact have a religious significance is something beyond the competence of legislatures and courts. This is so for the simple reason that whether or not such religious significance exists lies inherently within the mind and heart of the individual man or woman.

The Committee respectfully suggests that this Court should definitely repudiate the idea that a governmental agency can predicate any official action whatsoever upon the notion that it, rather than the individual, can determine whether or not a particular ceremony carries a religious significance. When the legislature, the executive, or the courts enter this sphere, they are doing no more or less than attempting to tell the individual what is or is not displeasing to God.

We suggest, therefore, that this Court should deal with the case on the premise that a matter of religious belief is involved and that the courts of Georgia, Massachusetts, New Jersey and New York, in declaring the contrary, have been in error.

We turn now to the second and wholly different issue—whether it is constitutional to override the religious objection of the children under the circumstances of this case.

II

There is no such public need for the compulsory flag salute as to justify the overriding of the religious scruples of the children.

If, as we have submitted, the flag salute must be deemed a religious ceremony so far as these respondent children are concerned, the validity of the school regulation depends upon the existence of a clear public need for compulsory flag saluting in the schools.¹⁰

Since the Mormon Polygamy Cases it has not been doubted that religious scruples and beliefs must, under some circumstances, yield to "the laws of society, designed to secure its peace and prosperity, and the morals of its people". *Davis v. Beason*, 133 U.S. 333, 342 (1890). And though the brief of the petitioner school authorities relies largely upon the wholly different proposition that the salute cannot be regarded as a religious ritual, it is necessary to examine this further aspect of the problem, both because of the respect due to the official act of a state agency and because at least one state court has upheld the flag salute requirement on this ground. *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85, 82 P. (2d) 391 (1938), certiorari denied 306 U. S. 621 (1939); cf. *People v. Sandstrom*, 279 N. Y. 523, 18 N.E. (2d) 840, 843 (1939).

I. General Observations.

We submit two general observations which are basic to this branch of the argument.

(a) In the first place, the legislation is of a sort new to America. We have noted (*supra*, pp. 2-3) its novelty as an attempt to *compel* a particular form of expression as distinguished from *restraints* on certain kinds of expres-

¹⁰ It is here assumed that the regulation will not be upheld on the technical ground discussed in Point IV of this brief, *viz.*, that public school education is granted as a matter of grace and that expulsion from school therefore cannot serve as the basis of a claim of constitutional right.

sion. It is novel also in that the legislative power here invoked rests upon a somewhat new ground. As the above quotation from *Davis v. Beason* indicates, the police power is customarily exercised in furtherance of the safety, morals, physical health or economic welfare of the people as distinguished from their *morale*. Later (pp. 28-29) we shall point out that well-established public needs of this character were involved in all situations where the courts have held that religious convictions must yield to overriding public interests. It follows that a recognition of this new ground—the presumed promotion of loyalty and morale—as a basis for the overruling of religious scruples would be a new extension of legislative power. The present dominance of totalitarian ideas in other parts of the world suggests that an extension of legislative power in this direction should be viewed with suspicion and, *in the absence of a showing of clear necessity*, should be condemned as a deprivation of individual liberty without due process of law.

(b) In the second place, it is important to recognize that the *compulsory* flag salute is an entirely different thing from the *voluntary* salute, which has come to be accepted as a mere gesture of proper respect to the nation we love.

The difference may be illustrated by the familiar custom that a gentleman raises his hat upon meeting a lady of his acquaintance on the street. The gesture is ordinarily regarded as a simple token of courtesy and its omission may lead to social disapproval. It does not follow, however, that a statute ~~requiring~~ the gesture would be constitutional, especially in the face of a religious objection. If a Quaker should object to the ceremony on the religious ground suggested in the quotation from Barclay set out above at pages 13-14, the invalidity of the requirement *as to him* would seem clear.

According to the opinion of the Circuit Court, the *compulsory* flag salute is a recent phenomenon, which made its first appearance in Kansas in 1907 (R. 157). Not until the last decade has it gained widespread legislative

support. Perhaps this is the reason why the difference between the compulsory and the voluntary salute is not more readily recognized.

Never having encountered a compulsory salute in their own school experience, many persons may tend to regard the ceremony as a normal gesture of respect to a national symbol. They may thus fail to appreciate the distinction in practical effect between a voluntary and compelled ceremony. The difference is, however, fundamental. Persons who willingly give a voluntary salute find that it increases their own loyalty. Then they may assume that, as a matter of course, the compulsory salute will increase the loyalty of others. But it by no means follows that the same effect of increased loyalty will be caused by a salute given only under compulsion and in violation of one's deepest convictions. The willing salutor easily assumes that failure to salute even under compulsion shows a lack of loyalty. Because the willing act of saluting is associated with loyalty in his own mind, he may assume that the failure of others to salute under compulsion is associated with disloyalty. But plainly this is not the fact. A concrete proof to the contrary is that the lower courts have expressly found, as indeed it has been proved or assumed in every litigated flag salute case, that the children are loyal American citizens and have not intended to show any disrespect for the Government.

With the novel character of the legislation, and the distinction between voluntary and compulsory saluting kept clearly in mind, it becomes easier to place in its proper setting the precise issues as to the alleged justification for the compulsory salute.

2. Discussion of the appropriate standard of judicial scrutiny.

The Committee firmly believes that legislation which infringes upon such basic individual liberties as freedom of speech, press, assembly, and religion should be subjected to a more exacting test of validity than legislation which

regulates property and business. This position implies no indifference to the constitutional guarantees for the protection of property. The Fifth and Fourteenth Amendments deny the power of government to deprive any person of "property" without "due process of law" as plainly as they deny the power to take "life" or "liberty" without due process. Property is entitled to reasonable and proper protection within the spirit and letter of these guarantees; and if such protection should ever fail, a vital element of the American constitutional system would be eliminated.

Nevertheless, consistently with the views just expressed, there are solid reasons for a distinction in the *judicial approach* in testing the validity of laws in these two general categories. In the ordinary due process case involving legislation which taxes or otherwise affects property, the Court is dealing merely with a negative provision of the Constitution, which imposes some limits on common types of legislation. It is clear that these limits must be applied in such a way that the processes of government shall not be crippled but shall remain flexible to meet changing public needs. In this field the purpose of the Constitution is primarily to be sure that the regular processes of government are free from wholly unreasonable, that is to say arbitrary, legislative or official action. Accordingly a presumption may properly be held to run in favor of the validity of this class of legislation. In recognition of this principle, the general rule for such ordinary statutes and regulations is that they will be upheld if there is evidence in the record tending to establish the existence of a state of facts which rational men might consider a basis for governmental action, or if the Court can judicially notice such facts. A statement of this effect was recently made by this Court, through Mr. Justice Stone:

"... regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of the facts made known

or generally assumed if is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators." *United States v. Carolene Products Co.*, 304 U. S. 144, 152 (1938); see also *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 191-192 (1938).

On the other hand, when legislation undertakes to restrict or override religious beliefs it runs head on against a great affirmative principle expressly declared by the First Amendment and embodied in national emotions since the landing of the Pilgrims. So strong is the policy of safeguarding the basic individual liberties—including religious freedom—that the presumption should be against, rather than for, the validity of any statute abridging those liberties. Therefore, we submit that it would not be sufficient for the Court here to accept the mere opinion of other men. We respectfully submit that in a case of this kind the Court should *itself* be convinced of the existence of a public need which is sufficiently urgent to override the great principle of religious freedom in the particular case.

The desirability of such a different judicial approach to claims of infringement upon the fundamental individual liberties was suggested in the *Carolene Products* case. This Court, after stating the rule applicable in determining the validity of the ordinary statute, said (304 U. S. at p. 152, note 4):

"There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See *Stromberg v. California*, 283 U. S. 359, 369-370; *Lovell v. Griffin*, 303 U. S. 444, 452.

"It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of

undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation. . . .

"Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious, . . . or national, . . . or racial minorities . . . : whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."

The question thus reserved seems to have been answered in *Schneider v. New Jersey*, 308 U. S. 147 (1939) which held four city ordinances unconstitutional as unduly restricting the rights to distribute handbills and to canvass for non-commercial purposes. With reference to freedom of speech and the press, the Court, through Mr. Justice Roberts, said (at page 161):

"In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. *Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.*"¹¹ (Italics supplied.)

We respectfully suggest that this is a proper case in which to affirm and make definite the proposition that a "more exacting judicial scrutiny" will be applied in cases where abridgement of the rights mentioned in the First Amendment is charged.

¹¹ "The [*Schneider*] decision . . . lends authoritative substance to the theory that there may be no room for the presumption of constitutionality, usually accorded state or municipal legislation, where the statute or ordinance interferes with a civil liberty as distinguished from legislative impairment of an economic privilege." 40 Columbia Law Review 531, 532 (1940).

3. Discussion as to whether there is sufficient justification for the compulsory salute.

Applying more specifically the principles just discussed, the Committee submits that when an official departure from the principle of religious liberty or any other fundamental individual liberty is at issue, the government must sustain two propositions which do not present themselves in the ordinary due process case. *First:* The public need for the challenged legislation must be shown, to the satisfaction of the Court, to be more important than the maintenance of the constitutional guarantee. *Second:* It is not sufficient that *some* legitimate end will be furthered by the challenged legislation, so long as the desired purpose can be accomplished in one or more other reasonable ways which do not result in impairment of the religious liberty of the individual or his other liberties.

We now discuss the present case in the light of these two points.

(a) *The alleged public need is not sufficiently urgent.*

The seriousness of the public need for an infringement of religious liberty can best be weighed by comparing that need with the value of the policy favoring religious liberty. The supposed public need tends to shrink in our estimation when we recall past infringements, and when we remember how reasons for limiting religious liberty which at the time seemed important are now thought negligible in contrast with the principle of religious toleration.

As is well known, the provision of the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." derives from and may be regarded as a condensed formulation of the Virginia Statute of Religious Freedom, drafted by Thomas Jefferson. Ever since, the intent and spirit of the great Virginia statute have been looked to as a guide in determining the scope and force of the religious guarantees set forth in the First Amendment.

and, correspondingly, the scope of the religious "liberty" secured against state action by the Fourteenth Amendment.¹²

It will be observed that Jefferson, in drafting this Act, declared that "it is time enough" for government to interfere when religious principles "break out into overt acts against peace and good order." And we submit here that the underlying and fundamental question in this case is whether the failure of these children to salute the flag does constitute "overt acts against peace and good order." If so, an overriding public need for the expulsion of these children from school might be thought to exist. But we submit that the mere failure of these children, because of their religious beliefs, to conform to this ceremony is far indeed from constituting "overt acts against peace and good order."

The effort to assimilate the innocent and sincere religious objections of these children to acts against "peace and good order", so as to justify their expulsion from their school, seems to us the result of misconception and overzeal. It seems inconsistent also with the statement

¹²For the Virginia Statute of Religious Freedom, see 12 Hening, Va. Stat. At. L. 84-85 (1823). For brevity, we do not quote the statute at length, but suggest that in view of its close relation to the religious guarantee of the First Amendment, it deserves re-examination in connection with this case. We call attention especially to what the Statute sets forth as to the ignoble character of a bribe to a candidate to abandon his religious beliefs as a condition of holding office—a thought which seems equally applicable to a virtual bribe to a child to contravene his religion as a condition of staying in public school.

The close historical relation between the Virginia Statute of Religious Freedom and the religious clause of the First Amendment is well established. (*Reynolds v. United States*, 98 U. S. 145, 163-164 (1878).) Jefferson's authorship of the Statute is common knowledge by reason of the inscription which he directed to be placed on his tomb at Monticello: "Author of the Declaration of American Independence, of the Statute of Virginia for Religious Freedom, and Father of the University of Virginia." The direct connection of the Statute, through James Madison, with the First Amendment is, however, less commonly known. Madison, long associated with Jefferson, was interested in 1786 in the adoption of the Statute which Jefferson had written seven years before; and later, in the summer of 1789, became the principal draftsman and advocate in the First Congress of the first ten Amendments, upon which Jefferson had been insistent. See *James Madison* by S. H. Gay in the American Statesmen Series (pp. 68, 145-146) and *Thomas Jefferson* by John T. Morse, Jr. in the same series (pp. 45-47).

of the principles of religious liberty made by Chief Justice Hughes (dissenting with the concurrence of Mr. Justice Holmes, Mr. Justice Brandeis and Mr. Justice Stone) in *United States v. Macintosh*, 283 U. S. 605, 634 (1931).

" . . . freedom of conscience itself implies respect for an innate conviction of paramount duty. The battle for religious liberty has been fought and won with respect to religious beliefs and practices, which are not in conflict with good order, upon the very ground of the supremacy of conscience within its proper field. What that field is, under our system of government, presents in part a question of constitutional law and also, in part, one of legislative policy in avoiding unnecessary clashes with the dictates of conscience. There is abundant room for enforcing the requisite authority of law as it is enacted and requires obedience, and for maintaining the conception of the supremacy of law as essential to orderly government, without demanding that either citizens or applicants for citizenship shall assume by oath an obligation to regard allegiance to God as subordinate to allegiance to civil power. The attempt to exact such a promise, and thus to bind one's conscience by the taking of oaths or the submission to tests, has been the cause of many deplorable conflicts."

Whether the challenged regulation is tested by the narrow approach used in ordinary due process cases or by the broader approach of common sense and experience, we submit that no urgent need for the regulation is shown.

So far as evidence in the record is concerned, there is very little which even tends to support the reasonableness of the regulation. The only testimony of this sort was given by the one witness for the petitioners—Superintendent Charles E. Rondabush, of the Minersville Public Schools. His testimony on the point can fairly be summarized as follows: (1) Experience with the *voluntary* salute indicates that it tends to inculcate in the saluting children a love of country (R. 91); (2) the refusal of some children to salute would lead to a general breakdown of classroom morale (R. 92).

The Committee believes that this testimony offers no substantial support for the regulation as here applied. Experience with the *voluntary* salute can have no bearing on the fundamentally different *compulsory* ceremony here involved, at least when opposed by religious scruple. Indeed, Mr. Roundabush declined to answer the question whether patriotism would be inculcated in a child forced to salute in disregard of religious convictions.

As for his fear that general classroom morale would suffer, the witness' statement is a pure expression of opinion unsupported by reference to actual situations in which demoralization had in fact resulted. There is no suggestion that the classes from which the respondent children have been expelled were demoralized or showed any tendency in that direction. Nor is there any explanation as to why demoralization could not be prevented by a simple explanation that exemption from the salute is granted on religious grounds.

Furthermore, the insubstantial evidence outlined above is opposed by the statements of authorities on educational psychology which are noticed in the opinion of the Circuit Court (R. 173-174). These statements are to the effect that the compulsory flag salute not only is ineffectual to accomplish the purpose of inculcating patriotism, but may indeed tend to dull patriotic sentiment. Both lower courts have found that enforcement of the salute requirement is not a reasonable method of teaching civics and arousing loyalty, but tends to have the contrary effect upon children who object upon religious grounds (R. 123, 173, 174). And it has also been found as fact that the children's refusal to salute did not promote disrespect for the Government and its laws (R. 123). Thus, the lower courts have refused to credit either branch of the testimony of the petitioner Superintendent, which has been summarized above.

The Committee therefore submits that, on this record, there is no substantial evidence to show the existence of

a reasonable factual basis for the regulation. And since the petitioners state no additional facts which can be judicially noticed for this purpose, the regulation fails to meet even the test by which the validity of ordinary legislation is to be determined.

Furthermore, even if the meager evidence set out above could be thought sufficient to sustain the legislation if the constitutional attack were upon an ordinary commercial regulation, it is believed that the flag salute requirement *must be held invalid under the "more exacting judicial scrutiny"* which should be applied in adjudicating claims of infringement upon the fundamental individual liberties.

We emphasize that the alleged public need in this case does not admit of proof like ordinary issues of fact or even the special issues of fact involved in the usual due process cases.¹³ No eye-witnesses can say whether a child's morale and loyalty are actually increased after a compulsory salute opposed to his religious beliefs. The Court cannot depend on experts, because there are no experts.¹⁴ Opinions can be expressed one way or another about the effect of compulsory salutes, but these are based almost wholly in mere speculation. There are no considered researches. Nobody has made a psychoanalytical investigation of the mental reactions of children after a repugnant salute. This is a question which the Court has to decide with little, if any, useful outside help of any sort. The issue is simply not susceptible of determination on the basis of concrete evidence either within or without the record. Rather a proper conclusion depends on common sense and human experience—in short upon the judgment of mature and sensible men.

¹³ See Bickle, *Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action*, 38 *Harvard Law Review* 6 (1924); Frankfurter & Landis, *The Supreme Court under the Judiciary Act of 1925*, 42 *Harvard Law Review* 1, 18-24 (1928).

¹⁴ Contrast the proof as to the value of vaccination described in *Jacobson v. Massachusetts*, 197 U. S. 11, 23-24 (1905).

Thus viewed, it simply does not make sense that morale is raised by a compulsory salute offending the child's deepest convictions. To the contrary, the conclusions of the District and Circuit Courts that the children's refusal to salute did not promote disrespect for the Government and its laws (R. 123) are in accordance with common sense and common experience. We must remember again that we are dealing here not with a voluntary ceremony in which children are invited to participate if they wish. Nor are we dealing with a required ceremony to which no objection is made. We are dealing with a case in which, although the ceremony is required under pain of expulsion from school, the religious convictions of the dissenters are nevertheless so strongly held that they firmly resist the orders of the school authority. Is there any common sense to the thought that the coercion of children holding views so strongly as do these respondent children can possibly induce sentiments of loyalty in such children?

The above considerations may oblige the supporters of the compulsory flag salute to grant that coercion of children who refuse to comply with the salute upon religious grounds cannot induce loyalty *in them*. But they may suggest that the necessities of discipline require universal enforcement even if this means driving the children out of school. Such a position is, of course, familiar in military life. There coercion is often reasonable and necessary, since the very function of a military unit requires implicit and uniform obedience; and to obtain this, all non-compliance with orders, reasonable or unreasonable, must be firmly dealt with in furtherance of the very purpose for which the unit exists. The fallacy of attempting to apply this analogy to school life lies in the difference between the purposes of school education and the purposes of an army. The function of an army is to fight, and for that very reason to achieve a disciplined and regimented organization. But the purpose of American schools is primarily

to impart knowledge and to prepare for life under free institutions. The purpose is *not* to turn out a regimented group seasoned to coercive methods.

When an examination is made of the other situations where it has been declared that religious liberty must give way to a leg. requirement, the public need for such a requirement is obvious to sensible men and very different from the vague conception of *morale* involved in the case at bar.

Examples of religious practices which can be constitutionally prohibited, according to judicial decisions or dicta, are: bigamy and polygamy, which have "always been odious among the northern and western nations of Europe" and are "crimes by the laws of all civilized and Christian countries"¹⁵; human sacrifices¹⁶; suttee¹⁷; thuggery and the religious belief in assassination¹⁸; promiscuous sexual intercourse¹⁹; circulation of obscene writings²⁰; the possession of sacramental wine in excess of a statutory limit²¹; burial customs dangerous to health²²; violation of Sunday Law by Seventh Day Adventist²³; the wearing by public school teachers of dress or insignia showing membership in a religious sect, which would break down the separation of the Church and State²⁴; and spiritualistic fortune-telling²⁵. In *all* these cases specific adverse consequences of the forbidden action were made plain by general experi-

¹⁵ *Reynolds v. United States*, 98 U. S. 145 (1878); *Davis v. Beason*, 133 U. S. 333 (1890).

¹⁶ *Davis v. Beason*, *supra*, at pp. 343-344.

¹⁷ *Davis v. Beason*, *supra*, at p. 344.

¹⁸ *Mormon Church v. United States*, 136 U. S. 1, 49 (1890); *Guiteau's Case*, 10 Fed. 161, 175 (Supreme Court, D. C., 1881).

¹⁹ *Davis v. Beason*, *supra*, at p. 344.

²⁰ *Knowles v. United States*, 170 Fed. 409, 411 (C.C.A., 8th, 1909).

²¹ *Shapiro v. Lyle*, 30 F. (2d) 971 (D. C., W. D. Wash., 1929).

²² *In re Wong Yung Quy*, 2 Fed. 624, 632 (Circuit Court, D. Cal., 1880).

²³ *Scales v. State*, 47 Ark. 476, 1 S. W. 769, 58 Am. Rep. 768 (1886).

²⁴ *Commonwealth v. Herr*, 229 Pa. 132, 78 Atl. 68 (1910).

²⁵ *McMasters v. State*, 21 Okla. Cr. 318, 207 Pac. 566, 29 A.L.R. 292 (1922).

ence; and, if necessary, further proof of their bad effects could have been introduced by witnesses.

The unusual feature of the case at bar—that the law requires a person to perform a particular ceremony contrary to his religious beliefs—is not paralleled by any strictly analogous case; and in the cases bearing some resemblance, the public need for the conduct required was far clearer than for a compulsory flag salute. Thus parents have been punished in several cases for failure to furnish medical aid to their children on account of religious beliefs.²⁶ Military training has been imposed despite religious objections²⁷; and the expression of a willingness to bear arms has been upheld as a condition of naturalization by this Court, although with the dissent of four justices.²⁸ Even though opinions differ about the power of the government to override religious convictions in the matter of bearing arms, it is still plain that a soldier may have some usefulness to the country despite his religious objections to his task. But the object of the present law is admittedly not to obtain definite useful services, but merely to produce a state of mind. An increase of loyalty is proposed to be caused in the child by requiring conduct which offends his spiritual convictions. The possibility of such a result is so contrary to human experience and so completely unsupported by evidence, that the case at bar is clearly differentiated from the military service and other cases just mentioned.

(b) *Even if the challenged legislation be deemed to serve a public need, there are other reasonable ways of accomplishing the purpose without infringing the religious convictions of the children.*

²⁶ *Quinn v. State*, 6 Okla. Cr. 110, 116 Pac. 345 (1911), annotated in 36 L.R.A. N.S. 633 and Ann. Cas. 1913B, 1221; see also Note, 13 Yale Law Journal 42 (1903).

²⁷ *Hamilton v. Regents*, 293 U. S. 245, 262 (1934).

²⁸ *United States v. Macintosh*, 283 U. S. 605 (1931). See also *Fraina v. United States*, 25 Fed. 28, 36 (C.C.A. 2d, 1918).

The petitioner Superintendent himself admitted that although he considered the salute an appropriate means of teaching loyalty to the State, it is not an indispensable method but is merely one of several available means to that end (R. 98). The Committee submits that, on the basis of authorities now to be discussed, this consideration by itself is conclusive against the validity of the regulation.

In *Hague v. Committee for Industrial Organization*, 307 U. S. 496 (1939) the Court held invalid a city ordinance which provided for the licensing of meetings in the public streets and parks. The ordinance was defended on the ground that it allowed refusal of a permit to assemble only if such refusal would prevent "riots, disturbances or disorderly assemblage". Such a purpose is unquestionably a salutary one. The Court held, however, that the city must deal with the threatened disorder by "the alternative method of police protection, instead of employing an expedient which, though probably more effective as an administrative matter, would interfere more seriously with freedom of assembly.

Again in *Schneider v. New Jersey* and its three companion cases, 308 U. S. 147 (1939) this Court held invalid four city ordinances allegedly designed to further two legitimate and indeed laudable purposes: to prevent littering of the streets and to thwart fraudulent appeals in the name of charity and religion. Even though the State courts had found that distribution of handbills on the public streets resulted in a littering of the streets which the questioned ordinances would effectively prevent this Court held that interference with such distribution was an unconstitutional abridgment of the right to freedom of speech and press. The Court said:

"We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature

to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. . . .

“ . . . As we have pointed out, *the public convenience, in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution.*” 308 U. S. at pp. 162-163. (Italics supplied.)

With reference to an ordinance requiring house-to-house canvassers to procure a permit from the local chief of police, the Court said:

“Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas, to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. *If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.*” 308 U. S. at p. 164. (Italics supplied.)

In other words it was held that, when the fundamental individual liberties are at stake, the Government is *restricted in its choice of methods* and may even be required to adopt a relatively inefficient and inconvenient means to achieve a proper purpose.

If this doctrine is applicable to freedom of speech, is it not applicable also to the equally basic guarantee of liberty of conscience?

The Committee submits that the present case falls squarely within the rule of the *Hague* and *Schneider* decisions, and that the petitioner school authorities are required by the Constitution to adopt some alternative method or methods of fostering patriotism in school children instead of insisting upon the imposition of the salute upon children who object to it on religious grounds. Various alternative methods to this end are available and will readily occur to the Court. Some of them are mentioned in the next point of this brief (p. 38).

* * * * *

Summarizing our argument under this main head, we submit:

First: (a) The legislation is novel as purporting to compel a ceremony, instead of merely restraining expression. Moreover, the legislative purpose here invoked—the promotion of loyalty and morale as distinguished from safety, morals, health or economic welfare—represents a novel exercise of power; such an extension of power should be viewed with suspicion.

(b) The case relates to the validity of a compulsory ceremony, the character and effect of which are wholly different from that of the voluntary flag salute. Considerations relating to the voluntary salute are, therefore, irrelevant.

Second: Judicial scrutiny of the validity of legislation asserted to abridge basic individual liberties—including religious freedom—should be more exacting

than in other kinds of "due process" cases. In a case like that at bar, there should be no presumption of validity.

Third: There is no sufficient justification for the compulsory salute.

(a) To support a statute or regulation overriding religious beliefs, the Court itself should be satisfied that there is an urgent public need for the challenged legislation; and no such urgent need is here shown whether the need is tested by evidence in the record or by common sense and experience.

(b) Even if a public need is deemed to be served, the Court should be satisfied that no reasonable ways other than the compulsory salute are available to accomplish the avowed purpose; and there are other reasonable ways available.

Since the School Board regulation does not meet these constitutional tests, it is void.

III

Even if the salute be considered incapable of any religious meaning, compulsory salute legislation is void as an unjustifiable infringement of the liberty of the individual.

Up to this point, we have dealt with the problem on the assumption that an issue of strictly religious liberty is involved—as distinguished from the liberty of the citizen in a broader sense, of which religious liberty is only one aspect. We have argued: (1) that a question of religious liberty is clearly at issue because a religious objection is sincerely asserted and neither legislature nor court is competent to deny its existence; and (2) that there is no sufficient justification for the overriding and penalizing of this religious scruple.

Assuming that this Court holds that an issue of religious liberty is involved, the broader question now argued would not be presented. We must, however, recognize the possibility that the Court will agree with the four state courts above mentioned in refusing to recognize the existence of a religious question. On this hypothesis, it is important to inquire whether the legislation would still be unconstitutional as a deprivation, without due process of law, of liberty in a broader sense. On this point, we shall submit that the legislation is void even though the refusal by the respondent children is not treated as a religious objection.

As already noted, the state courts, in confirming the constitutionality of the compulsory salute, have sometimes stated that the legislature has wide discretion to stimulate loyalty and strengthen morale even by means of coercive requirements. This is the effect of such statements as are made in *Nicholls v. Lynn*, 7 N. E. (2d) 577, 579 (Mass., 1937); *Gabrielli v. Knickerbocker*, 12 Cal. (2d) 85,

82 P. (2d) 391, 394 (1938); *People v. Sandstrom*, 279 N. Y. 523, 531, 18 N. E. (2d) 840, 843 (1939).²⁹

The Committee has, of course, no quarrel with the broad statements of this character in so far as they declare that maintenance of loyalty and preservation of morale are of the highest importance to the welfare of the State. No one disputes that. We submit, however, that such a premise falls far short of supporting the conclusion which these courts have sought to draw from it: that government can accomplish this proper purpose by *forcing* citizens, under severe penalty and against their will, to salute a particular symbol in a particular way. The crux of the whole matter relates to method. Granted that the object is proper, is it constitutional to try to achieve it by this form of compulsion, rather than by many other available methods?

The breadth of the courts' language above referred to must indeed give one pause as to the implications of the doctrine thus expressed. If it be constitutional to prescribe a salute and pledge to the *flag* on the part of school children and to force compliance upon the ground that to do so may promote loyalty, then why, it may be fairly asked, could not the legislature choose to require a tribute of respect to some other symbol? In many countries, a person rather than a flag is considered the most appropriate symbol of national unity and morale—usually the chief-of-state. In Germany, it is the Fuehrer rather than the swastika or the German flag that is the usual subject of a gesture of loyalty; in Italy it is the same with the Duce, and in Russia, with Stalin. Would it, upon the reasoning just referred to, be constitutional to require school children to salute a por-

²⁹ For example, in *People v. Sandstrom*, the New York Court of Appeals said in a dictum (279 N. Y. at p. 531, 18 N.E. (2d) at p. 843):

"There is another strength which is necessary to preserve the government besides military force, and that is the moral strength, or public opinion of its citizens. Public opinion is as vital to the maintenance of good government as an army or a navy; in fact these latter can be destroyed quicker by public opinion than by the attacks of an enemy. Many a nation has succumbed to the breakdown of the morale of its people. The State, therefore, is justified in taking such measures as will engender and maintain patriotism in the young."

trait of a national hero—Washington, Lincoln or Jefferson—even if objecting children did not put their refusal upon religious grounds? Under like circumstances, would it be constitutional to require such a salute to a picture of the President during his term, whoever he might be?

It may be said that a portrait of a man differs from the flag in that the flag is merely an abstract symbol. Whether such a distinction is valid may be tested by inquiring whether it would be constitutional for the legislature to require *all persons*, young and old (except young infants, the infirm and the sick), to salute the *flag* at stated intervals. The statute of Pennsylvania in the case at bar permits the school authorities to require the salute from children; and statutes of other states directly require the ceremony and frequently prescribe its frequency, such as once a week and even daily.³⁰ The requirement of the salute from the whole population would therefore be merely a matter of extending these very statutes to a different age group.

Specifically, let us suppose that a statute of Pennsylvania or New York should require the whole adult population to give this particular form of salute once a week at a time to be fixed by the Governor or other executive agency. Let us suppose that many citizens refused to comply, but none on religious grounds. Some would presumably refuse on grounds of mere inconvenience; others might object to the particular form of the salute as too much resembling the Nazi and Fascist salutes. Still others would doubtless invoke their "liberty" as American citizens without further specifying what they had in mind. Let us suppose that these objectors were arrested and put on trial as to whether they should suffer penalties for their non-compliance and that they were to plead the unconstitutionality of the legislation as depriving them of

³⁰ The Massachusetts statute involved in *Nicholls v. Lynn*, 7 N.E. (2d) 577 (1937) and *Johnson v. Deerfield*, 25 F. Supp. 918 (D. Mass., 1939), aff'd without opinion 306 U. S. 621 (1939) required the salute ceremony to be held every week. The New Jersey statute involved in *Hering v. State Board of Education*, 117 N. J. L. 455, 189 Atl. 629, aff'd, 118 N. J. L. 566, 194 Atl. 177 (1937), appeal dismissed 303 U. S. 624 (1938), called for a daily salute.

their "liberty" under the Fourteenth Amendment. Would this plea be good?

We submit that the plea would be good and that such legislation would be unconstitutional. The requirement of such a ritual is clearly alien to our institutions. It would be an intolerable invasion of individual liberties. Because it is inherent in the very nature of Americans to resent unnecessary assertions of authority, such a measure would not further the end of promoting loyalty and strengthening morale, but would have precisely the opposite effect. It would be unconstitutional because there would be no "appropriate relation" between the legislative command and the prescribed punishment, on the one hand, and the avowed objective on the other.³¹

As already pointed out, it was not until the first of these flag salute statutes was enacted that any American Government had attempted to force its citizens (not in military service) to go through any form of ceremony similar to this. We suggest that the supposed legislation would be held void for the broad reason that such an encroachment on the liberty of the citizen would be unnecessary and unreasonable and wholly inconsistent with the spirit of our institutions.

If the above conclusion be sound in respect of legislation seeking to compel a salute from the whole population, does precisely similar legislation become valid merely because it is restricted to children of school age? We suggest that this difference is not sufficient to sustain the legislation. It is true that it may be argued that children of school age need the salute and may be benefited by it to an extent that does not apply to adults. The argument might have some validity if it appeared that there was an "appropriate relation" between the object sought—viz., the promotion of loyalty—and the means employed. However, as we have shown in the preceding section of this brief, there is no

³¹ Cf. *Roberts, J., in Herndon v. Lowry*, 301 U. S. 242, 258 (1937): "The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule. . . . The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. . . ."

evidence or common sense to support the conclusion that saluting the flag *under coercion* is reasonably adapted to the promotion of loyalty or morale; rather, the idea that such coercion can produce the desired result is contrary to common sense and experience.

Assuming that the compulsory flag salute legislation of these 18 states is held void, let there be no fear that there will have been abolished a method that is needed for the promotion of national loyalty. For nearly five generations since 1789, the nation relied wholly on spontaneous and voluntary manifestations to preserve sentiments of loyalty. We have survived five wars during that period without resorting to compulsory salutes from the civil population.

The country does not lack ways and means of promoting loyalty. These methods have been practiced for generations. We have our national holidays—the Fourth of July, when the Declaration of Independence is honored; the birthday of “the father of his country,” when the name of Washington is honored; the birthday of Lincoln, when honor is paid to the saviour of the Union; Memorial Day, when respect is paid to the veterans of our wars. The observance of these and other occasions, such as Army Day and Navy Day, may be made more significant for children. They can be further encouraged to visit places of historic interest. Above all, in order to instill a wellgrounded loyalty, instruction can be increased and improved in those aspects of English and American history, which deal with the evolution of our fundamental rights. In these and a hundred other ways, the schools of America can find *spontaneous and voluntary* methods of stimulating and conserving patriotic loyalty.³² These methods have served us well.

³² In this automobile age, millions of children can see one or more of the places that inspire love of country—Lexington and Concord, Mt. Vernon and Monticello, the Washington monument and Arlington, Independence Hall, the tombs of Lincoln and Grant. They can be led to read and better understand some of the great utterances of our famous men and some of the great documents of our history including the first ten Amendments. The number of ways available for the promotion of loyalty, without resort to compulsory ritual, is indefinitely large.

In a country of many diverse racial stocks and religious beliefs, these voluntary manifestations have been effective to weld a strong national spirit. We will lose nothing and we may gain much if we firmly resist the imposition of such compulsory methods as are represented by these flag salute statutes.

If these laws are held void we shall be deprived of nothing useful. They are not needed; and their invalidation is demanded by the spirit and letter of our Constitution.

IV

The compulsory flag salute cannot be sustained on the ground that public school education is granted as a matter of grace so that the requirement, even though arbitrary and capricious, can be enforced by expulsion from public school.

Some courts have suggested that public school education is provided as a matter of grace, the possible inference being that it can therefore be withheld for any reason that seems proper to the school authorities, whose determination on the question of reasonableness must be final. See *Leoles v. Landers*, 184 Ga. 580, 192 S.E. 218, 221, 222 (1937); *Hering v. State Board of Education*, 117 N.J.L. 455, 189 Atl. 629, affd. 118 N.J.L. 566, 194 Atl. 177 (1937). The position of these courts seems to be that expulsion from public school inflicts injury of a special kind which can never serve for the basis of a claim of constitutional right, no matter how arbitrary the rule which the school authorities seek to enforce. The Committee submits that such a position is unsound in principle and that it has been repudiated by this Court.

The Minersville Public Schools are maintained by property taxes imposed on taxable property within the district; and, as the petitioners have admitted in their answer, the respondent Walter Gobitis is a resident of the Borough of Minersville and the School District (R. 4, 28). His testimony that he was a taxpayer was not contradicted (R. 47).

The respondent children have a legal right against expulsion for insufficient cause, and have brought this action to vindicate that legal right. If expulsion from public school cannot serve as the basis for a constitutional attack, the reason must be found either in the insubstantiality of the injury (cf. *Standard Computing Scale Co. v. Farrell*, 249 U. S. 571 (1919)) or in the School District's proprietary interest in the school facilities.

There can be no doubt that deprivation of a common school education would be a serious disadvantage to the children. For a child to go through life without the rudimentary training provided by grade schools is a tremendous handicap. And the District Court has found that, if the children are to be relieved of that handicap, the petitioner Walter Gobitis must pay upwards of \$3,000 for tuition and other expenses incidental to their education in a private school. Thus it seems plain that enforcement of the flag salute requirement will inflict either a great hardship upon the children or a heavy pecuniary loss upon their father.

Since the threatened harm is a substantial one, the only remaining question is whether the fact that the title to school facilities is in the public enables the State or its agency, like a private owner, to exclude any persons distasteful to it. A similar contention was repudiated by this Court in *Hague v. Committee for Industrial Organization*, 307 U. S. 496 (1939) and in *Schneider v. New Jersey*, 308 U. S. 447 (1939), with respect to public streets and parks. The reasoning of the Court in those cases is decisive against the contention here. The concept of governmental services as public utilities, which we developed in our brief as friends of the Court in the *Hague* case, is particularly applicable to schools. Education is certainly more of a necessity of life than urban transportation and electric power. It should be subject to the same requirements of service without arbitrary discrimination. The notion that the public school authorities can arbitrarily run the schools as they please would justify the exclusion of any unpopular group.

Furthermore, it should be noted that to uphold the present regulation on such a ground would fall far short of settling the flag salute problem, because of the virtually universal statutory requirement, generally backed by criminal sanctions, that young children attend some school, public or private. Such a statute is embodied in the Pennsylvania School Code, as amended, Section 1423 (24 P. S. Pa. § 1430). If an expelled child is unable to obtain private schooling, disciplinary action might be taken against the child's parents or the child himself (depending upon the law of the particular state) for violation of the compulsory school attendance statute.

This is not an academic question. Such a prosecution was actually instituted against the parents of an expelled child in *People v. Sandstrom*, 279 N. Y. 523, 18 N. E. (2d) 840 (1939). Their convictions were reversed by the New York Court of Appeals on the ground that, "if it is thought necessary to carry the matter further, the action must be against the scholar, not the parents." 18 N. E. (2d) at p. 844. A still more striking example arose out of the situation presented in *Johnson v. Deerfield*, 306 U. S. 621 (1939). After this Court's refusal to hear oral argument on the appeal in that case, the expelled children were prosecuted as "habitual school offenders" within the meaning of the applicable Massachusetts statutes and were sentenced to a reform school.³³ Their convictions have been affirmed by the Superior Court of the County of Franklin, and a further appeal was argued on September 20, 1939 in the Supreme Judicial Court, where it is still awaiting decision.

It may be suggested that the decision of this Court in *Hamilton v. Regents*, 293 U. S. 245 (1934) militates against the Committee's position on this branch of the case. That decision upheld a requirement that all persons attending the University of California, a state institu-

³³ See Grinnell, *Children, The Bill of Rights and the American Flag*, Massachusetts Law Quarterly, April-June 1939. See also Clark, a lecture at the Association of the Bar of the City of New York, *The Limits of Free Expression*, N. Y. Law Journal, July 11, 12, 13 and 14, 1939; reprinted in 73 U. S. Law Review 392, 399-402, (1939).

tion, be required to undergo a period of military training. The requirement was upheld against the objection of a member of the Methodist Episcopal Church, who complained that it infringed his right of religious liberty.

There are expressions in the opinion of the Court that might be construed to mean that attendance at a state university is a privilege which, if accepted, must be taken with any accompanying hardships. However, the Committee believes that the decision is explained rather by the paramount public necessity of training able-bodied male citizens of suitable age to develop their fitness for military and police service. If the Committee is mistaken in this respect and the decision did involve a determination that university training is a gratuity which can be withheld at will, then it appears to have been overruled by the later case of *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337 (1938), holding invalid a statute which unconstitutionally restricted the right to attend a state-supported law school.

In any event, it should be pointed out that the *Hamilton* case is distinguishable on its facts. Whatever may be thought of a ruling that a free or inexpensive university training may be withheld in the discretion of the local authorities, it cannot be doubted that deprivation of a common school education is a far more serious hardship. In the New York and Massachusetts cases mentioned above, such deprivation has already resulted, and it would result even in the situation here before the Court if the respondent Walter Gobitis should become financially unable to send his children to private school.

Moreover, the *Hamilton* case is distinguishable in that there is no legal obligation to attend a university, whereas there is a legal obligation to obtain a common school education and, as a practical matter, the average child must get it in a public school. Thus the average child cannot avoid a compulsory salute requirement in states where it prevails, although any conscientious objector can avoid a compulsory drill requirement in a university by choosing not to go there.

CONCLUSION

The philosophy of free institutions is now being subjected to the most severe test it has ever undergone. Advocates of totalitarian government point to the speed and efficiency with which such systems are administered, and assert that democracy can offer nothing to outweigh these advantages. The answer is to be found in the value of certain basic individual rights and the assurance afforded by free institutions that these shall not be required to yield to majority pressure no matter how overwhelming.

The worth of our system must ultimately be judged in terms of the importance of those values and the care with which they are safeguarded. We consider them immeasurably important. We believe that the letter and spirit of our Constitution demand vindication of the individual liberties which are abridged by the challenged regulation.

Accordingly, the Committee submits that the judgment of the lower court should be affirmed.

Respectfully submitted,

THE COMMITTEE ON THE BILL OF RIGHTS, OF THE
AMERICAN BAR ASSOCIATION

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APPENDIX

Resolution of the House of Delegates of the American Bar Association, dated January 9, 1940.

RESOLVED that the resolution with reference to the Special Committee on the Bill of Rights, adopted by the House of Delegates on July 29, 1938, and amended on January 9, 1939, be amended to read as follows:

"Whereas, it is desirable that the American Bar Association shall take immediate and practical steps to assure to American citizens that whenever rights or immunities secured by the Bill of Rights are anywhere denied to any citizen or threatened with denial, there shall be a speedy and impartial investigation of the facts, and where the facts warrant it, there shall be certainty of the assistance of competent lawyers and defense in protection of such rights; and

Whereas, for centuries it has been and now is an important duty of the legal profession to safeguard these rights and to promote general understanding thereof,

It is hereby resolved:

That the American Bar Association hereby creates a Special Committee on the Bill of Rights which shall consist of fourteen members* and shall be authorized:

1. To investigate, or cause to be investigated, instances of seeming substantial violations of threatened violations of Bills of Rights, whether by legislative or administrative action or otherwise, and, when authorized by the House of Delegates or Board of Governors or in case of emergency by the President, to make public its conclusions in respect thereto.

*There are now two vacancies on the Committee, the present membership being twelve.

2. To take such steps as it may deem proper in the defense of such rights in instances which otherwise might go undefended; and, when authorized by the House of Delegates or Board of Governors or, in case of emergency, by the President, to appear as *amicus curiae* or otherwise in cases in which vital issues of civil liberty are deemed to be involved.

3. To disseminate information generally concerning our constitutional liberties to the end that violations thereof may be the better recognized and proper steps taken to prevent or correct them.

4. To cooperate with State and Local Bar Associations and with appropriate committees thereof and to do such other things as may be necessary or proper and are authorized by the Board of Governors, to carry out the purposes of this resolution.

SUPREME COURT OF THE UNITED STATES.

No. 690.—OCTOBER TERM, 1939.

Minersville School District, Board of
Education of Minersville School Dis-
trict, et al., Petitioners,

vs.

Walter Gobitis, Individually, and Lil-
lian Gobitis and William Gobitis,
Minors, by Walter Gobitis, their next
friend.

On Writ of Certiorari to
the United States Cir-
cuit Court of Appeals
for the Third Circuit.

[June 3, 1940.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

A grave responsibility confronts this Court whenever in course of litigation it must reconcile the conflicting claims of liberty and authority. But when the liberty invoked is liberty of conscience, and the authority is authority to safeguard the nation's fellowship, judicial conscience is put to its severest test. Of such a nature is the present controversy.

Lillian Gobitis, aged twelve, and her brother William, aged ten, were expelled from the public schools of Minersville, Pennsylvania, for refusing to salute the national flag as part of a daily school exercise. The local Board of Education required both teachers and pupils to participate in this ceremony. The ceremony is a familiar one. The right hand is placed on the breast and the following pledge recited in unison: "I pledge allegiance to my flag, and to the Republic for which it stands; one nation indivisible, with liberty and justice for all." While the words are spoken, teachers and pupils extend their right hands in salute to the flag. The Gobitis family are affiliated with "Jehovah's Witnesses", for whom the Bible as the Word of God is the supreme authority. The children had been brought up conscientiously to believe that such a

gesture of respect for the flag was forbidden by command of scripture¹

The Gobitis children were of an age for which Pennsylvania makes school attendance compulsory. Thus they were denied a free education, and their parents had to put them into private schools. To be relieved of the financial burden thereby entailed, their father, on behalf of the children and in his own behalf, brought this suit. He sought to enjoin the authorities from continuing to exact participation in the flag-salute ceremony as a condition of his children's attendance at the Minersville school. After trial of the issues, Judge Maris gave relief in the District Court on the basis of a thoughtful opinion, 21 F. Supp. 581; his decree was affirmed by the Circuit Court of Appeals, 108 F. (2d) 683. Since this decision ran counter to several *per curiam* dispositions of this Court,² we granted *certiorari* to give the matter full reconsideration, 309 U. S. 415. By their able submissions, the Committee on the Bill of Rights of the American Bar Association and the American Civil Liberties Union, as friends of the Court, have helped us to our conclusion.

We must decide whether the requirement of participation in such a ceremony, exacted from a child who refuses upon sincere religious grounds, infringes without due process of law the liberty guaranteed by the Fourteenth Amendment.

Centuries of strife over the erection of particular dogmas as exclusive or all-comprehending faiths led to the inclusion of a guarantee for religious freedom in the Bill of Rights. The First Amendment, and the Fourteenth through its absorption of the First, sought to guard against repetition of those bitter religious struggles by prohibiting the establishment of a state religion and by securing

¹ Reliance is especially placed on the following verses from Chapter 20 of Exodus:

³ 3. Thou shalt have no other gods before me.

⁴ 4. Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

⁵ 5. Thou shalt not bow down thyself to them, nor serve them:

² *Leeds v. Landers et al.*, 302 U. S. 656; *Hering v. State Board of Education*, 303 U. S. 624; *Gabrielli v. Knickerbocker*, 306 U. S. 621; *Johnson v. Deerfield*, 306 U. S. 621; 307 U. S. 650. Compare *People v. Sandstrom*, 279 N. Y. 523; *Nicholls v. Mayor and School Committee of Lynn*, 7 N. E. (2d) 577 (Mass.).

to every sect the free exercise of its faith. So pervasive is the acceptance of this precious right that its scope is brought into question, as here, only when the conscience of individuals collides with the felt necessities of society.

Certainly the affirmative pursuit of one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law. Government may not interfere with organized or individual expression of belief or disbelief. Propagation of belief—or even of disbelief in the supernatural—is protected, whether in church or chapel, mosque or synagogue, tabernacle or meeting-house. Likewise the Constitution assures generous immunity to the individual from imposition of penalties for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in government. *Cantwell v. Connecticut*, decided this Term, May 20, 1940.

But the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellow-men. When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good? To state the problem is to recall the truth that no single principle can answer all of life's complexities. The right to freedom of religious belief, however dissident and however obnoxious to the cherished beliefs of others—even of a majority—is itself the denial of an absolute. But to affirm that the freedom to follow conscience has itself no limits in the life of a society would deny that very plurality of principles which, as a matter of history, underlies protection of religious toleration. Compare Mr. Justice Holmes in *Hudson Water Co. v. McCarter*, 209 U. S. 349, 355. Our present task then, as so often the case with courts, is to reconcile two rights in order to prevent either from destroying the other. But, because in safeguarding conscience we are dealing with interests so subtle and so dear, every possible leeway should be given to the claims of religious faith.

In the judicial enforcement of religious freedom we are concerned with a historic concept. See Mr. Justice Cardozo in *Hamilton v. Regents*, 293 U. S. at 265. The religious liberty which the Con-

4 *Minersville School District et al. vs. Gobitis et al.*

stitution protects has never excluded legislation of general scope not directed against doctrinal loyalties of particular sects. Judicial nullification of legislation cannot be justified by attributing to the framers of the Bill of Rights views for which there is no historic warrant. Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs.³ The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities. The necessity for this adjustment has again and again been recognized. In a number of situations the exertion of political authority has been sustained, while basic considerations of religious freedom have been left inviolate. *Reynolds v. United States*, 98 U. S. 145; *Davis v. Beason*, 133 U. S. 333; *Selective Draft Law Cases*, 245 U. S. 366; *Hamilton v. Regents*, 293 U. S. 245. In all these cases the general laws in question, upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable. Nor does the freedom of speech assured by Due Process move in a more absolute circle of immunity than that enjoyed by religious freedom. Even if it were assumed that freedom of speech goes beyond the historic concept of full opportunity to utter and to disseminate views, however heretical or offensive to dominant opinion, and includes freedom from conveying what may be deemed an implied but rejected affirmation, the question remains whether school children, like the Gobitis children, must be excused from conduct required of all the other children in the promotion of national cohesion. We are dealing with an interest inferior to none in the hierarchy of legal values. National unity is the basis of national security. To deny the legislature the right to select appropriate means for its attainment presents a totally different order of problem from that of the propriety of subordinating the possible ugliness of littered streets to the free expression of

³ Compare II Writings of Thomas Jefferson (Ford ed.) p. 192; 3 Letters and Other Writings of James Madison, pp. 274, 397-398; 1 Rhode Island Records, pp. 378-80; 2 *Id.* pp. 5-6; Wigner, Roger Williams' Contribution to Modern Thought, 28 Rhode Island Historical Society Collections, No. 1; Ernst, The Political Thought of Roger Williams, chap. VII; W. K. Jordan, The Development of Religious Toleration in England, *passim*. See Commonwealth v. Herr, 229 Pa. 132.

Colonial

opinion through distribution of handbills. Compare *Schneider v. State*, 308 U. S. 147.

Situations like the present are phases of the profoundest problem confronting a democracy—the problem which Lincoln cast in memorable dilemma: “Must a government of necessity be too *strong* for the liberties of its people, or too *weak* to maintain its own existence?” No mere textual reading or logical talisman can solve the dilemma. And when the issue demands judicial determination, it is not the personal notion of judges of what wise adjustment requires which must prevail.

Unlike the instances we have cited, the case before us is not concerned with an exertion of legislative power for the promotion of some specific need or interest of secular society—the protection of the family, the promotion of health, the common defense, the raising of public revenues to defray the cost of government. But all these specific activities of government presuppose the existence of an organized political society. The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, ~~transmit~~ *transmit* them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. “We live by symbols.” The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution. This Court has had occasion to say that “. . . the flag is the symbol of the Nation’s power, the emblem of freedom in its truest, best sense . . . it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression.” *Halter v. Nebraska*, 205 U. S. 34, 43. And see *United States v. Gettysburg Elec. Co.*, 160 U. S. 668.⁴

The case before us must be viewed as though the legislature of Pennsylvania had itself formally directed the flag-salute for the children of Minersville; had made no exemption for children whose parents were possessed of conscientious scruples like those of the

⁴ For the origin and history of the American flag, see 8 Journals of the Continental Congress, p. 464; 22 *Id.*, pp. 338-40; Annals of Congress, 15th Cong., 1st Sess., Vol. 1, pp. 566 *et seq.*; *Id.*, Vol. 2, pp. 1458 *et seq.*

Gobitis family, and had indicated its belief in the desirable ends to be secured by having its public school children share a common experience at those periods of development when their minds are supposedly receptive to its assimilation, by an exercise appropriate in time and place and setting, and one designed to evoke in them appreciation of the nation's hopes and dreams, its sufferings and sacrifices. The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious.⁵ To stigmatize legislative judgment in providing for this universal gesture of respect for the symbol of our national life in the setting of the common school as a lawless inroad on that freedom of conscience which the Constitution protects, would amount to no less than the pronouncement of pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence. The influences which help toward a common feeling for the common country are manifold. Some may seem harsh and others no doubt are foolish. Surely, however, the end is legitimate. And the effective means for its attainment are still so uncertain and so unauthenticated by science as to preclude us from putting the widely prevalent belief in flag-saluting beyond the pale of legislative power. It mocks reason and denies our whole history to find in the allowance of a requirement to salute our flag on fitting occasions the seeds of salvation for obeisance to a leader.

The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process is not for our independent judgment. Even were we convinced of the folly of such a measure, such belief would be no proof of its unconstitutionality. For ourselves, we might be tempted to say that the deepest patriotism is best engendered by giving unfettered scope to the most crochety beliefs. Perhaps it is best, even from the standpoint of those interests which ordinances like the one under review seek to promote, to give to the least popular sect leave from conformities like those here in issue. But the court-

⁵ Compare Balfour, Introduction to Bagehot's English Constitution, p. XXII; Santayana, Character and Opinion in the United States, pp. 110-11.

room is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncracies among a people so diversified in racial origins and religious allegiances. So to hold would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it.

We are dealing here with the formative period in the development of citizenship. Great diversity of psychological and ethical opinion exists among us concerning the best way to train children for their place in society. Because of these differences and because of reluctance to permit a single, iron-cast system of education to be imposed upon a nation compounded of so many strains, we have held that, even though public education is one of our most cherished democratic institutions, the Bill of Rights bars a state from compelling all children to attend the public schools. *Pierce v. Society of Sisters*, 268 U. S. 510. But it is a very different thing for this Court to exercise censorship over the conviction of legislatures that a particular program or exercise will best promote in the minds of children who attend the common schools an attachment to the institutions of their country.

What the school authorities are really asserting is the right to awaken in the child's mind considerations as to the significance of the flag contrary to those implanted by the parent. In such an attempt the state is normally at a disadvantage in competing with the parent's authority, so long—and this is the vital aspect of religious toleration—as parents are unmolested in their right to counteract by their own persuasiveness the wisdom and rightness of those loyalties which the state's educational system is seeking to promote. Except where the transgression of constitutional liberty is too plain for argument, personal freedom is best maintained—so long as the remedial channels of the democratic process remain open and unobstructed⁶—when it is ingrained in a people's habits and not enforced against popular policy by the coercion of adjudicated law.

⁶ In cases like *Fiske v. Kansas*, 274 U. S. 380; *De Jonge v. Oregon*, 299 U. S. 353; *Lovell v. Griffin*, 303 U. S. 444; *Hague v. C. I. O.*, 307 U. S. 496, and *Schneider v. State*, 308 U. S. 147, the Court was concerned with restrictions cutting off appropriate means through which, in a free society, the processes of popular rule may effectively function.

That the flag-salute is an allowable portion of a school program for those who do not invoke conscientious scruples is surely not debatable. But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise.

The preciousness of the family relation, the authority and independence which give dignity to parenthood, indeed the enjoyment of all freedom, presuppose the kind of ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever may be their lesser differences and difficulties. That is to say, the process may be utilized so long as men's right to believe as they please, to win others to their way of belief, and their right to assemble in their chosen places of worship for the devotional ceremonies of their faith, are all fully respected.

Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to courts is committed the guardianship of deeply-cherished liberties. See *Missouri, K. & T. R. Co. v. May*, 194 U. S. 267, 270. Where all the effective means of inducing political changes are left free from interference, education in the abandonment of foolish legislation is itself a training in liberty. To fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather than to transfer such a contest to the judicial arena, serves to vindicate the self-confidence of a free people.⁷

Reversed.

Mr. Justice McREYNOLDS concurs in the result.

⁷ It is to be noted that the Congress has not entered the field of legislation here under consideration.

SUPREME COURT OF THE UNITED STATES.

No. 690.—OCTOBER TERM, 1939.

Minersville School District, Board of
Education of Minersville School Dis-
trict, et al., Petitioners,

vs.

Walter Gobitis, Individually, and Lil-
lian Gobitis and William Gobitis,
Minors, by Walter Gobitis, their next
friend.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Third Circuit.

[June 3, 1940.]

Mr. Justice STONE.

I think the judgment below should be affirmed.

Two youths, now fifteen and sixteen years of age, are by the judgment of this Court held liable to expulsion from the public schools and to denial of all publicly supported educational privileges because of their refusal to yield to the compulsion of a law which commands their participation in a school ceremony contrary to their religious convictions. They and their father are citizens and have not exhibited by any action or statement of opinion, any disloyalty to the Government of the United States. They are ready and willing to obey all its laws which do not conflict with what they sincerely believe to be the higher commandments of God. It is not doubted that these convictions are religious, that they are genuine, or that the refusal to yield to the compulsion of the law is in good faith and with all sincerity. It would be a denial of their faith as well as the teachings of most religions to say that children of their age could not have religious convictions.

The law which is thus sustained is unique in the history of Anglo-American legislation. It does more than suppress freedom of speech and more than prohibit the free exercise of religion, which concededly are forbidden by the First Amendment and are violations of the liberty guaranteed by the Fourteenth. For by this law the


state seeks to coerce these children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions. It is not denied that such compulsion is a prohibited infringement of personal liberty, freedom of speech and religion, guaranteed by the Bill of Rights, except in so far as it may be justified and supported as a proper exercise of the state's power over public education. Since the state, in competition with parents, may through teaching in the public schools indoctrinate the minds of the young, it is said that in aid of its undertaking to inspire loyalty and devotion to constituted authority and the flag which symbolizes it, it may coerce the pupil to make affirmation contrary to his belief and in violation of his religious faith. And, finally, it is said that since the Minersville School Board and others are of the opinion that the country will be better served by conformity than by the observance of religious liberty which the Constitution prescribes, the courts are not free to pass judgment on the Board's choice.

Concededly the constitutional guaranties of personal liberty are not always absolutes. Government has a right to survive and powers conferred upon it are not necessarily set at naught by the express prohibitions of the Bill of Rights. It may make war and raise armies. To that end it may compel citizens to give military service, *Selective Draft Law Cases*, 245 U. S. 366, and subject them to military training despite their religious objections. *Hamilton v. Regents*, 293 U. S. 245. It may suppress religious practices dangerous to morals, and presumably those also which are inimical to public safety, health and good order. *Davis v. Beason*, 133 U. S. 333. But it is a long step, and one which I am unable to take, to the position that government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience.

The very fact that we have constitutional guaranties of civil liberties and the specificity of their command where freedom of speech and of religion are concerned require some accommodation of the powers which government normally exercises, when no question of civil liberty is involved, to the constitutional demand that those liberties be protected against the action of government itself. The state concededly has power to require and control the education of its citizens, but it cannot by a general law compelling attendance

at public schools preclude attendance at a private school adequate in its instruction, where the parent seeks to secure for the child the benefits of religious instruction not provided by the public school. *Pierce v. Society of Sisters*, 268 U. S. 510. And only recently we have held that the state's authority to control its public streets by generally applicable regulations is not an absolute to which free speech must yield, and cannot be made the medium of its suppression. *Hague v. Committee of Industrial Organization*, 307 U. S. 496, 514, *et seq.*, any more than can its authority to penalize littering of the streets by a general law be used to suppress the distribution of handbills as a means of communicating ideas to their recipients. *Schneider v. State*, 308 U. S. 147.

In these cases it was pointed out that where there are competing demands of the interests of government and of liberty under the Constitution; and where the performance of governmental functions is brought into conflict with specific constitutional restrictions, there must, when that is possible, be reasonable accommodation between them so as to preserve the essentials of both and that it is the function of courts to determine whether such accommodation is reasonably possible. In the cases just mentioned the Court was of opinion that there were ways enough to secure the legitimate state end without infringing the asserted immunity, or that the inconvenience caused by the inability to secure that end satisfactorily through other means, did not outweigh freedom of speech or religion. So here, even if we believe that such compulsions will contribute to national unity, there are other ways to teach loyalty and patriotism which are the sources of national unity, than by compelling the pupil to affirm that which he does not believe and by commanding a form of affirmance which violates his religious convictions. Without recourse to such compulsion the state is free to compel attendance at school and require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty which tend to inspire patriotism and love of country. I cannot say that government here is deprived of any interest or function which it is entitled to maintain at the expense of the protection of civil liberties by requiring it to resort to the alternatives which do not coerce an affirmation of belief.



The guaranties of civil liberty are but guaranties of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them. They presuppose the right of the individual to hold such opinions as he will and to give them reasonably free expression, and his freedom, and that of the state as well, to teach and persuade others by the communication of ideas. The very essence of the liberty which they guaranty is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to his religion. If these guaranties are to have any meaning they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion.

History teaches us that there have been but few infringements of personal liberty by the state which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, at politically helpless minorities. The framers were not unaware that under the system which they created most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection. I cannot conceive that in prescribing, as limitations upon the powers of government, the freedom of the mind and spirit secured by the explicit guaranties of freedom of speech and religion, they intended or rightly could have left any latitude for a legislative judgment that the compulsory expression of belief which violates religious convictions would better serve the public interest than their protection. The Constitution may well elicit expressions of loyalty to it and to the government which it created, but it does not command such expressions or otherwise give any indication that compulsory expressions of loyalty play any such part in our scheme of government as to override the constitutional protection of freedom of speech and religion. And while such expressions of loyalty, when voluntarily given, may promote national unity, it is quite another matter to say that their compulsory expression by children in violation of their own and their parents' religious convictions can be regarded as playing so important a part in our national unity as to leave school boards free to exact

it despite the constitutional guarantee of freedom of religion. The very terms of the Bill of Rights preclude, it seems to me, any reconciliation of such compulsions with the constitutional guaranties by a legislative declaration that they are more important to the public welfare than the Bill of Rights.

But even if this view be rejected and it is considered that there is some scope for the determination by legislatures whether the citizen shall be compelled to give public expression of such sentiments contrary to his religion, I am not persuaded that we should refrain from passing upon the legislative judgment "as long as the remedial channels of the democratic process remain open and unobstructed." This seems to me no more than the surrender of the constitutional protection of the liberty of small minorities to the popular will. We have previously pointed to the importance of a searching judicial inquiry into the legislative judgment in situations where prejudice against discrete and insular minorities may tend to curtail the operation of those political processes ordinarily to be relied on to protect minorities. See *United States v. Carolene Products Co.*, 304 U. S. 144, 152, note 4. And until now we have not hesitated similarly to scrutinize legislation restricting the civil liberty of racial and religious minorities although no political process was affected. *Meyer v. Nebraska*, 262 U. S. 390; *Pierce v. Society of Sisters*, *supra*; *Farrington v. Tokushige*, 273 U. S. 284. Here we have such a small minority entertaining in good faith a religious belief, which is such a departure from the usual course of human conduct, that most persons are disposed to regard it with little toleration or concern. In such circumstances careful scrutiny of legislative efforts to secure conformity of belief and opinion by a compulsory affirmation of the desired belief, is especially needful if civil rights are to receive any protection. Tested by this standard, I am not prepared to say that the right of this small and helpless minority, including children having a strong religious conviction, whether they understand its nature or not, to refrain from an expression obnoxious to their religion, is to be overborne by the interest of the state in maintaining discipline in the schools.

The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey, if it is to adhere to that justice and moderation without which no free govern-

ment can exist. For this reason it would seem that legislation which operates to repress the religious freedom of small minorities, which is admittedly within the scope of the protection of the Bill of Rights, must at least be subject to the same judicial scrutiny as legislation which we have recently held to infringe the constitutional liberty of religious and racial minorities.

With such scrutiny I cannot say that the inconveniences which may attend some sensible adjustment of school discipline in order that the religious convictions of these children may be spared, presents a problem so momentous or pressing as to outweigh the freedom from compulsory violation of religious faith which has been thought worthy of constitutional protection.